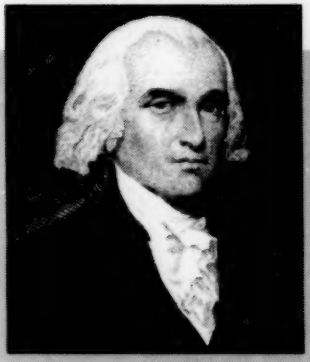
THE DELAWARE JOURNAL OF CORPORATE LAW

FIRST DECENNIAL DIGEST

Volumes I - X
1975 - 1985



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PREFACE

The First Decennial Digest is but another step in the continuing effort of the editors and staff of the *Delaware Journal of Corporate Law* to offer unique resource materials to the organized bar and academic community. Placing particular emphasis on corporate and business topics, the *Journal* provides such features as articles, notes, comments, and book reviews. In addition, the *Journal* features a compilation of the Delaware Court of Chancery's unreported decisions which the editors consider significant but which are not published elsewhere. This reporting service makes the *Delaware Journal of Corporate Law* unique among student-run law reviews.

This digest provides indices for finding all of the features published by the *Journal* in Volumes I through X. However, it is primarily designed to serve as a research tool for finding unreported Delaware Court of Chancery cases which are germane to the legal research being conducted by the user of this digest. To expedite the user's research, all cases were headnoted at the time of publication according to the *National Reporter* key number classification system.* Indices are herein provided for case names, statutes construed, rules of court construed, and key number classifications for all cases published in Volumes I through X of the *Journal*.

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⇦ 4 Ground of abatement in general

1984 Litigation should be confined to the forum in which it is first commenced. Defendant should not be permitted to defeat plaintiff's place of forum in a pending suit by commencing litigation involving the same cause of action in another jurisdiction of its own choosing.—*Kirkland v. International Community Corp.* No. 7577, 9:476.

1977 The rule of law in Delaware covering a motion for a stay is: that such stay may be warranted, however, by facts and circumstances sufficient to move the discretion of the Court; that such discretion should be exercised freely in favor of the stay when there is a prior action pending elsewhere, in a court capable of doing prompt and complete justice, involving the same parties and the same issues; that, as a general rule, litigation should be confined to the forum in which it is first commenced, and a defendant should not be permitted to defeat the plaintiff's choice of forum in a pending suit by commencing litigation involving the same cause of action in another jurisdiction of its own choosing; that these concepts are impelled by considerations of comity and the necessities of an orderly and efficient administration of justice.—*Issen & Settler v. GCS Enterprises, Inc.*, No. 5452, 5:138.

1976 Considerations of comity and the orderly administration of justice demand that where there is a prior action pending in a court capable of doing prompt and complete justice involving the same, or essentially the same, parties and issues, the action first commenced in the forum selected by the plaintiff should be permitted to go forward.—*H.K. Porter Co. v. Missouri Portland Cement Co.*, No. 5114, 3:543.

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ACTION

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⇨65 Rights and defenses arising after commencement of action

1984 If equity jurisdiction is properly invoked, the court of chancery may retain jurisdiction even though circumstances arising after the filing of the complaint make it inappropriate or improper to grant equitable relief.—*Lord & Burnham Corp. v. Four Seasons Solar Products Corp.*, No. 7319, 9:784.

⇨67 Stay of proceedings

1984 The court would not grant a stay since to grant a stay would be the equivalent of granting a party a continuation or temporary injunctive relief after the court had found on the record that the party had not made a sufficient showing to warrant the continued protection that it sought.—*Pfizer, Inc. v. ICI Americas, Inc.*, No. 7785, 10:275.

⇨68 In general

1984 The court would not grant a stay since to grant a stay would be the equivalent of granting a party a continuation or temporary injunctive relief after the court had found on the record that the party had not made a sufficient showing to warrant the continued protection that it sought.—*Pfizer, Inc. v. ICI Americas, Inc.*, No. 7785, 10:275.

1984 The decision on a motion to stay rests within the discretion of the court.—*Technicon Data Systems Corp. v. Curtis 1000, Inc.*, No. 7644, 9:499.

1983 A dismissal without prejudice pursuant to Rule 41(a)(2) when a Rule 60(b) motion to set aside the dismissal is pending is not yet a final judgment for the purposes of considering a motion to lift a stay. FED. R. CIV. P. 60(b).—*Issen & Settler v. GCS Enterprises, Inc.*, No. 5452, 8:588.

1980 The stay order does not prohibit the corporation from exercising an option given by plaintiff, since the motion for partial summary judgment made by plaintiff, and which was granted in his favor, went only to the validity of the amendment to the voting trust and specifically did not address the validity of the option.—*Grynberg v. Burke*, No. 5198, 6:230.

⇨69(1) Another action pending; in general

1984 Factors militating in favor of granting a stay include: (1) previously filed actions in another jurisdiction based on the same underlying transaction; (2) the other jurisdiction's law may be applicable to a portion of the Delaware proceeding; and (3) none of the witnesses reside in Delaware.—*Kirkland v. International Community Corp.*, No. 7577, 9:476.

1984 Decision as to motion to dismiss or stay an action based on *forum non conveniens* is by discretion of the court. Factors considered include: (1) the pendency of a prior filed action; (2) commonality of issues and parties; (3) applicability of Delaware law; (4) ease of access of proof; and (5) availability of compulsory process for the securing of witnesses.—*Wincorp Realty Investments, Inc. v. Goodtab, Inc.*, No. 7695, 9:840.

⇐ 69(2) Another action pending; actions in different jurisdictions in general

1984 Factors militating in favor of granting a stay include: (1) previously filed actions in another jurisdiction based on the same underlying transaction; (2) the other jurisdiction's law may be applicable to a portion of the Delaware proceeding; and (3) none of the witneses reside in Delaware.—*Kirkland v. International Community Corp.*, No. 7577, 9:476.

1984 A Delaware action will not be stayed as a matter of right by reason of a prior action pending in another jurisdiction involving the same parties and the same issues. A stay may be warranted, however, by facts and circumstances sufficient to move the discretion of the court. Such discretion should be exercised freely in favor of the stay when there is a prior action pending elsewhere, in a court capable of doing prompt and complete justice, involving the same parties and issues.—*Id.*

1984 Ordinarily, a stay will not be granted in favor of a subsequently filed action in another forum.—*Technicon Data Systems Corp. v. Curtis 1000, Inc.*, No. 7644, 9:499

1984 The deference to be accorded the plaintiff's choice of forum must be balanced against other factors which may or may not indicate that the efficient, orderly administration of justice would be better served by granting the stay.—*Id.*

1984 The decision to stay an action in favor of a prior suit is within the sound discretion of the court.—*Sprague Electric Co. v. Vitramon, Inc.*, No. 7586, 10:319.

1984 Although there may be limitations imposed upon the parties by the prior pending action sufficient to warrant denial of a motion to dismiss, these limitations do not justify maintaining two parallel actions simultaneously.—*Id.*

1984 In general, a previously filed action is entitled to presumptive priority over a later filed action.—*Wincorp Realty Investments, Inc. v. Goodtab, Inc.*, No. 7695, 9:840.

1983 The granting of a stay is within the discretion of the court.—*Issen & Settler v. GCS Enterprises, Inc.*, No. 5452, 8:588.

1983 Vacating a stay is discretionary and must be determined in light of the particular facts of each case.—*Id.*

1983 As a general rule, litigation should be confined to the forum in which it was first commenced as long as it is still pending and is viable.—*Id.*

1977 When the identical action is pending in another court, a stay will be granted when no sufficient reason has been shown to depart from the normal rule.—*Issen & Settler v. GCS Enterprises, Inc.*, No. 5452, 5:138.

1977 The rule of law in Delaware covering a motion for a stay is that such stay may be warranted by facts and circumstances sufficient to move the discretion of the Court; that such discretion should be exercised freely in favor of the stay when there is a prior action pending elsewhere, in a court capable of doing prompt and complete justice, involving the same parties and the same issues; that, as a general rule, litigation should be confined to the forum in which it is first commenced, and a defendant should not be permitted to defeat the plaintiff's choice of forum in a pending suit by commencing litigation involving the same cause of action in another jurisdiction of its own choosing; that these concepts are impelled by considerations of comity and the necessities of an orderly and efficient administration of justice.—*Id.*

1976 Considerations of comity and the orderly administration of justice demand that where there is a prior action pending in a court capable of doing prompt and complete justice involving the same, or essentially the same, parties and issues, the action first commenced in the forum selected by the plaintiff should be permitted

to go forward.—*H.K. Porter Co. v. Missouri Portland Cement Co.*, No. 5114, 3:543.

1976 A decision on an application to stay in favor of a proceeding in another forum is one which rests in the discretion of the court in light of the circumstances.—*Id.*

⇐ 69(4) Another action pending; identity of parties, subject matter, and relief

1984 A Delaware action will not be stayed as a matter of right by reason of a prior action pending in another jurisdiction involving the same parties and the same issues. A stay may be warranted, however, by facts and circumstances sufficient to move the discretion of the court. Such discretion should be exercised freely in favor of the stay when there is a prior action pending elsewhere, in a court capable of doing prompt and complete justice, involving the same parties and issues.—*Kirkland v. International Community Corp.*, No. 7577, 9:476.

1984 Although there may be limitations imposed upon the parties by the prior pending action sufficient to warrant denial of a motion to dismiss, these limitations do not justify maintaining two parallel actions simultaneously.—*Sprague Electric Co. v. Vitramon, Inc.*, No. 7586, 10:319.

1977 When the identical action is pending in another court, a stay will be granted when no sufficient reason has been shown to depart from the normal rule.—*Issen & Settler v. GCS Enterprises, Inc.*, No. 5452, 5:138.

1976 Considerations of comity and the orderly administration of justice demand that where there is a prior action pending in a court capable of doing prompt and complete justice involving the same, or essentially the same, parties and issues, the action first commenced in the forum selected by the plaintiffs should be permitted to go forward.—*H.K. Porter Co. v. Missouri Portland Cement Co.*, No. 5114, 3:543.

⇐ 71 Termination

1983 A dismissal without prejudice pursuant to Rule 41(a)(2) when a Rule 60(b) motion to set aside the dismissal is pending is not yet a final judgment for the purposes of considering a motion to lift a stay. FED. R. CIV. P. 60(b).—*Issen & Settler v. GCS Enterprises, Inc.*, No. 5452, 8:588.

1983 After a final dismissal without prejudice pursuant to Rule 41(a)(2), an action is no longer pending and further proceedings in the case are improper. FED. R. CIV. P. 41(a)(2).—*Id.*

1983 A Rule 60(b) motion does not affect the efficacy of a final judgment until it is granted. FED. R. CIV. P. 60(b).—*Id.*

AMICUS CURIAE

⇐ 1-3 Inclusive

⇐ 1 Right to appear and act in general

1977 There is no right to be heard as *amicus curiae*, but only the privilege to do so in the courts discretion.—*Chapin v. Benwood Foundation, Inc.*, No. 5305, 4:561.

1977 In the area of charitable trusts, there is precedent for the favorable exercise of discretion for an *amicus curiae* to be heard.—*Id.*

⇐ 3 Powers, function and procedures

1977 *Amicus curiae* is not a party to the action. He has no control over the proceedings, no right to institute proceedings, and he must take the case as he finds it.—*Chapin v. Benwood Foundation, Inc.*, No. 5305, 4:561.

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⇨ 68 Nature in general

1984 The court interpreted the recent amendment of Supreme Court Rule 42(b), which added thereto a new subparagraph (iii) while retaining the former subparagraph (iii) as a new paragraph (iv), to mean that one of the necessary criteria for an interlocutory appeal is met when a trial court vacates by interlocutory order an order or judgment that was previously entered in the case.—*Pfizer, Inc. v. ICI Americas, Inc.*, No. 7785, 10:287.

1982 An interlocutory order is appealable if it determines a substantial issue, establishes a legal right and may, on review, terminate the litigation or otherwise serve considerations of justice. DEL. SUP. CT. R. 42.—*Stepak v. Pioneer Texas Corp.*, No. 6315, 8:416.

1982 A holding that a demand need not be made on a corporate defendant by a plaintiff in a derivative suit does not establish a legal right as to the issue of whether or not the holding is an appealable interlocutory order.—*Id.*

⇨ 70(4) Nature and scope of decision; relating to witnesses, depositions, evidence, or discovery

1982 The question of whether a demand by a plaintiff on a corporate defendant in a derivative suit is necessary is a matter addressed to the discretion of the court of chancery. DEL. CH. CT. R. 23.1—*Stepak v. Pioneer Texas Corp.*, No. 6315, 8:416.

⇨ 87(5) Matters resting in discretion; relating to place, time, or conduct of trial, and to discovery and reference

1978 Separate trials on the issues of liability and damages have been authorized and approved where the facts as to those issues are complicated and the issues could be separated without significant prejudice to the parties.—*Valley Forge Corp. v. Certainteed Corp.*, No. 5309, 5:145.

⇨93 Determining action and preventing judgment

1984 The court interpreted the recent amendment of Supreme Court Rule 42(b), which added thereto a new subparagraph (iii) while retaining the former subparagraph (iii) as a new paragraph (iv), to mean that one of the necessary criteria for an interlocutory appeal is met when a trial court vacates by interlocutory order an order or judgment that was previously entered in the case.—*Pfizer, Inc. v. ICI Americas, Inc.*, No. 7785, 10:275.

⇨315 Proceedings to procure certificate

1978 An application for a certification of appeal to the Supreme Court is not properly part of a motion for reargument. DEL. SUP. CT. R. 42.—*Tuckman v. Aerosonic Corp.*, No. 4094, 5:152.

⇨458(1) Right to supersedeas or stay in general; in general

1980 A stay is inoperative if the right to appeal is to have any meaning, especially where the decision to be stayed relates to the control of a corporate enterprise.—*Grynberg v. Burke*, No. 5198, 6:226.

⇨458(2) Right to supersedeas or stay in general; judgment or orders which may be superseded or stayed in general

1980 A stay is inoperative if the right to appeal is to have any meaning, especially where the decision to be stayed relates to the control of a corporate enterprise.—*Grynberg v. Burke*, No. 5198, 6:226.

⇨460 Operation of appeal or writ of error and necessity for security or allowance

1975 Until it is determined that the appeal is unsuccessful, the supersedeas bond acts as security for the original judgment, but it does not amount to a judgment itself.—*Levien v. Sinclair Oil Corp.*, No. 1883, 1:230.

⇨460(4) Operation of appeal or writ of error and necessity for security or allowance; parties required to give security

1980 There is no basis to require individual defendants to provide a supersedeas bond when it is the corporation which is seeking the stay.—*Grynberg v. Burke*, No. 5198, 6:226.

⇨464 Sureties

1975 In all civil cases before the Delaware Supreme Court, the supersedeas surety shall, by the terms of the bond, submit to the jurisdiction of the court from which the appeal was taken and consent "that the liability of the parties on the bond may be enforced on motion without the necessity of an independent action . . ."—*Levien v. Sinclair Oil Corp.*, No. 1883, 1:230.

⇨465(1) Amount or penalty of bond or undertaking; in general

1980 There is no basis to require any substantial bond from the corporation when there are actual matters in dispute. Moreover, it would be circuitous to require the corporation itself to put up a substantial bond and to thus commit its assets to pay damages to those who own more than three-fourths of the corporation.—*Grynberg v. Burke*, No. 5198, 6:226.

⇨466 Conditions of bond or undertaking

1980 The court, as a condition to granting the stay, can require the defendants to initiate the interlocutory appeal and file opening briefs as expeditiously as possible and require the parties to cooperate in an expedited briefing schedule on appeal.—*Grynberg v. Burke*, No. 5198, 6:226.

1980 The court, as a condition to granting the stay, can require that the corporation issue no more stock and

no more stock options, pending the outcome of the appeal, nor allow the corporation to attempt any change in the shareholder structure of the corporation during that period.—*Id.*

1980 The court, as a condition to granting the stay, may forbid the corporation to dispose of, in any manner, all or a major portion of its assets. The court may also forbid any refinancing, liquidation, or merger agreements without plaintiffs first receiving notice and explanation.—*Id.*

1980 The court, as a condition to granting the stay, can require the corporation to file with the court a written acceptance to all conditions.—*Id.*

⇐ 479(1) Grounds for allowance; in general

1980 Where both parties seem to have been relatively content to allow present management to run matters during the course of litigation, the continuance of such status will not bring about dire consequences.—*Grynberg v. Burke*, No. 5198, 6:226.

⇐ 870(2) Interlocutory proceedings brought up in general; particular orders or rulings reviewable in general

1980 The additional element required for an interlocutory appeal is satisfied in that two recent decisions of the court of chancery, dealing with the creation of a voting trust under DEL. CODE tit. 8, § 218, appear to be in conflict. DEL. CODE ANN. tit. 8, § 218.—*Grynberg v. Burke*, No. 5198, 6:223.

⇐ 874(1) On separate appeal from interlocutory judgment or order; in general

1980 An interlocutory appeal is authorized where a decision has determined a substantial issue and established legal rights between the parties. The substantial issue is the determination that DEL. CODE tit. 8, § 218 applies to and governs the validity of the voting trust agreement and the purported amendment to that agreement. DEL. CODE ANN. tit. 8, § 218—*Grynberg v. Burke*, No. 5198, 6:223.

1980 Legal rights have been established by the prior decision that the amendment was ineffective since such decision deprives the corporation of the right to have the voting trust continue.—*Id.*

1980 The additional element required for an interlocutory appeal is satisfied in that two recent decisions of the court of chancery, dealing with the creation of a voting trust under DEL. CODE tit. 8, § 218, appear to be in conflict. DEL. CODE ANN. tit. 8, § 218. —*Id.*

⇐ 949 Allowance of remedy and matters of procedure in general

1985 Abuse of discretion is the standard for reviewing the court's exercise of its independent business judgment in deciding the intrinsic fairness of a compromise in a derivative or class action suit.—*Good v. Texaco, Inc.*, No. 7501, 10:854.

⇐ 984(5) Costs and allowances; attorneys' fees

1979 The award of legal fees in a derivative action is a discretionary act.—*Telvest, Inc. v. Olson*, No. 5798, 5:378.

1979 Judicial discretion to be exerted properly should be based on a record which reflects all the facts.—*Id.*

⇐ 996 Inferences from facts proved

1984 When a court reviews a decision of a master or an appraiser, it is not proper to ignore the appraiser's findings and review the entire evidentiary record anew.—*Charlip v. Lear Siegler, Inc.*, No. 5178, 10:168.

⇐ 1195(1) As law of the case; in general

1984 A factual finding of breach of fiduciary duty made by the supreme court on appeal constitutes the law of

the case on remand.—*Weinberger v. UOP, Inc.*, No. 5642, 9:502.

⇨1198 Compliance with mandate or discretion

1981 In an action by a stockholder seeking access to corporate records in order to value his stock, it is the court, not the corporation or petitioner, that determines what is essential and sufficient to determine value.—*Carroll v. CM&M Group, Inc.*, No. 6351, 7:181.

⇨1237 Summary remedies

1975 The desired result of a motion to enforce liability on a supersedeas bond after an unsuccessful appeal is to have the judgment entered against the surety also.—*Levien v. Sinclair Oil Corp.*, No. 1883, 1:230.

1975 Once the original judgment is affirmed, the supersedeas bond then becomes actionable; but still some judicial step is required to convert it into a judgment of record against the surety.—*Id.*

APPEARANCE

⇨1-29 Inclusive.

⇨17 Jurisdiction acquired—in general

1978 The entry of a general appearance does not necessarily waive a constitutional right which does not exist at the time.—*Tuckman v. Aerosonic*, No. 4094, 5:152.

ARBITRATION

I. NATURE AND FORM OF PROCEEDING, ⇨1-5.

II. AGREEMENT AND SUBMISSION, ⇨6-25.
- (A) AGREEMENTS TO ARBITRATE, ⇨6-10.
- (B) SUBMISSION, ⇨11-21.
- (C) PERFORMANCE, BREACH, ENFORCEMENT, AND CONTEST, ⇨22-25.

III. ARBITRATORS AND PROCEEDINGS, ⇨26-47.

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⇨17 In general

1978 The entry of a general appearance does not necessarily waive a constitutional right which does not exist at that time.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:148.

1978 The entry of a general appearance does not necessarily waive a constitutional right which does not exist at that time.—*Tuckman v. Aerosonic Corp.*, No. 4094, 5:152.

⇨1.2 Arbitration favored; public policy

1984 When arbitration has been contractually agreed to by the parties, there is a strong preference for resolving disputes through arbitration.—*Leason v. Merrill Lynch, Pierce, Fenner & Smith*, No. 6914, 9:776.

⇨3 Matters subject to arbitration

1984 Where the complaint does not allege violations of the Securities Act of 1933, but alleges a breach of fiduciary duty, the dispute between plaintiff customer and defendant stock brokerage firm is subject to arbitration. Securities Act of 1933, 15 U.S.C. § 77a.—*Leason v. Merrill Lynch, Pierce, Fenner & Smith*, No. 6914, 9:776.

⇨3.3 Statutory rights and obligations; matters of public interest

1984 If the agreement to arbitrate is valid, it is valid as to all members of the class and the responsibility to ar-

bitrate cannot be evaded by asserting claims through a class action.—*Leason v. Merrill Lynch, Pierce, Fenner & Smith*, No. 6914, 9:776.

⇨7.1 Liberal or strict construction and construction in favor of arbitration

1984 Doubtful issues regarding applicability of an arbitration clause are to be resolved in favor of arbitrability where the arbitration agreement seeks to embrace a general relationship.—*Leason v. Merrill Lynch, Pierce, Fenner & Smith*, No. 6914, 9:776.

1984 Federal law, rather than state law, determines whether a dispute is arbitrable.—*Merrill Lynch, Pierce, Fenner & Smith Inc. v. Sun K. Shin*, No. 7424, 8:604.

1984 Federal policy favors a liberal interpretation of the Arbitration Act. An employment contract containing an arbitration clause satisfies the requirements of section 2 of the Act and therefore whether the dispute is arbitrable is itself a question for arbitration.—*Id.*

1984 A court should not exercise its extraordinary powers of injunctive relief to maintain the status quo pending arbitration when the party requesting the relief drafted the agreement in question and, therefore, had the ability to anticipate the controversy and provide contractually for its resolution.—*Id.*

1984 The question of the scope of an arbitration agreement is first addressed to the arbitrator.—*Department of Transportation v. Delaware Employees Council No. 81*, No. 833, 9:435.

⇨7.2 Separability

1984 If the agreement to arbitrate is valid, it is valid as to all members of the class and the responsibility to arbitrate cannot be evaded by asserting claims through a class action.—*Leason v. Merrill Lynch, Pierce, Fenner & Smith*, No. 6914, 9:776.

⇨7.4 Disputes and matters arbitrable

1984 A court should not exercise its extraordinary powers of injunctive relief to maintain the status quo pending arbitration when the party requesting the relief drafted the agreement in question and, therefore, had the ability to anticipate the controversy and provide contractually for its resolution.—*Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Sun K. Shin*, No. 7424, 8:604.

1984 Where one is unsuccessful in arguing to the arbitrator that the claims of the opposing party are not within the scope of the arbitration agreement, then one may proceed in court to seek to vacate any award made.—*Department of Transportation v. Delaware State Employees Council No. 81*, No. 833, 9:435.

1984 Questions of whether a particular controversy is subject to arbitration should first be addressed to the arbitrator and not to the courts.—*Id.*

⇨7.9 Operation and effect

1985 Where the Federal Aviation Act is applicable to a dispute between parties, the grant of injunctive relief would abrogate the intent of the Arbitration Act, that being that the arbitration procedure be speedy and not subject to delay in the courts. 9 U.S.C. §§ 1-4 (1982).—*Merrill Lynch, Pierce, Fenner & Smith, Inc. v. McLaughlin*, No. 7948, 10:889.

⇨8 As ousting jurisdiction of courts

1984 Where plaintiff suggests that he was an unwilling party to the agreement which set out the arbitration procedure, but where there is no indication that the agreement was accomplished by fraud, the plaintiff is bound by what he knowingly signed.—*Leason v. Merrill Lynch, Pierce, Fenner & Smith*, No. 6914, 9:776.

⇨23.12 Questions to be determined

1984 The only grounds for enjoining an arbitration are: (1) a valid arbitration agreement was not made; (2) the arbitration agreement has not been complied with; or (3) the arbitration is barred by a lapse of time. DEL. CODE ANN. tit. 10, § 5703(b)

(1953).—*Department of Transportation v. Delaware Employees Council No. 81*, No. 833, 9:435.

⇨23.14 Arbitrability of dispute

1984 The arbitrator must decide whether the subject matter of the dispute is embraced by the arbitration agreement when the language of the arbitration agreement is unclear.—*Leason v. Merrill Lynch, Pierce, Fenner & Smith*, No. 6914, 9:776.

⇨23.17 Judgments or order and review

1984 Where the duty to arbitrate arises contractually, that duty may be enforced through an order of specific performance.—*Leason v. Merrill Lynch, Pierce, Fenner & Smith*, No. 6914, 9:776.

⇨76(1) Grounds, in general

1984 An arbitration award may be vacated where the arbitrators exceeded their powers or so imperfectly executed them that a final and definite award upon the subject matter was not made. DEL. CODE ANN. tit. 10, § 5714(a)(3) (1953).—*Department of Transportation v. Delaware Employees Council No. 81*, No. 833, 9:435.

ATTORNEY AND CLIENT

I. THE OFFICE OF ATTORNEY, ⇨ 1-61.
   (A) ADMISSION TO PRACTICE, ⇨ 1-11.
   (B) PRIVILEGES, DISABILITIES, AND LIABILITIES, ⇨ 14-33.
   (C) SUSPENSION AND DISBARMENT, ⇨ 34-61.

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   (A) FEES AND OTHER REMUNERATION, ⇨ 130-169.
   (B) LIEN, ⇨ 171-192.

⇨10 Admission of practitioners in different jurisdiction

1984 In ruling on a motion to revoke the admission of counsel to a proceeding *pro hac vice* based on the allegation of unethical conduct, the court will balance the need of the litigants to be represented by the counsel of their choice against the inherent right of the court to assure the ethical conduct of the attorneys who appear before it. In such deliberations, it would be inappropriate for a court to take such action against an attorney when his professional record is otherwise unblemished, the conduct complained of took place in another jurisdiction, and when the results of his conduct can be handled so as not to adversely affect the further course of the present proceedings.—*Kaplan v. Wyatt*, No. 6361, 9:205.

⇨20 In general

1984 In order to prevail on a motion to disqualify counsel, it must be established that the issues in the present case are substantially related to those in a previous litigation.—*Ercklentz v. Inverness Management Corp.*, No. 7167, 10:188.

⇨21 After termination of relation

1984 If it can reasonably be said that

in the course of the former representation the attorney might have acquired information related to the subject of a subsequent representation, then the relationship between the two matters is sufficiently close to prohibit the latter representation.—*Ercklentz v. Inverness Management Corp.*, No. 7167, 10:188.

1984 A party seeking to disqualify former counsel must satisfy a high standard of proof; a substantial relationship will be found only when the issues involved in the two representations have been found to be identical or essentially the same.—*Id.*

1984 The attorney will generally be disqualified whenever the subject matter of the second representation is so closely connected with the subject matter of the earlier representation that confidences might be involved.—*Id.*

1984 The same ethical considerations which bar an attorney from acting as counsel against former clients also precludes the attorney from acting as a class or derivative plaintiff against the former client.—*Id.*

1984 On a motion to disqualify an attorney based on former representation, the proper inquiry is whether the present representation is substantially related to the former representation.—*Greater Wilmington Sunday Advertisers, Inc. v. Auto Logic Publications, Inc.*, No. 6760, 10:203.

⇐ 36(1) Jurisdiction of courts; in general

1984 Where a party seeks a motion to revoke the admission *pro hac vice* of opposing counsel based on conduct engaged by him in another jurisdiction and in another case, the court will grant such a motion only where the acts of the attorney are contemptuous of the court or where they adversely affect the conduct of the trial. Otherwise, the matter should be left to the disciplinary machinery of the home state of the attorney.—*Kaplan v. Wyatt*, No. 6361, 9:205.

⇐ 38 Character and conduct in general

1984 When a meeting of counsel is directed to be held by a federal judge with regard to a case pending before him, it is reprehensible for one attorney to secretly tape record another in the course of each representing his respective client, regardless of the circumstances which are said to justify it.—*Kaplan v. Wyatt*, No. 6361, 9:205.

1984 It is unethical for an attorney in the course of his practice to record a conversation without informing all parties to that conversation.—*Id.*

⇐ 62 Rights of litigants to act in person or by attorney

1978 Court has the discretionary power to allow payment of attorney's fees out of trust property, but only if the conduct of the applicant has been reasonable and of benefit to the trust estate.—*Cannon v. Denver Tramway*, No. 3837, 4:276.

1978 Attorney's fees incurred in litigation concerned with the allocation or apportionment of two items of interest owed to a dissolution trust, which resulted in an apportionment of the interest between income and corpus, should be apportioned accordingly between them.—*Id.*

⇐ 86 Stipulations and admissions

1984 Attorneys are permitted to enter into stipulations and admissions in the course of representing their client.—*Charlip v. Lear Siegler, Inc.*, No. 5178, 10:168.

⇐ 101(1) Settlements, compromises, and releases, in general

1984 Attorneys are permitted to enter into stipulations and admissions in the course of representing their client.—*Charlip v. Lear Siegler, Inc.*, No. 5178, 10:168.

⇐ 123 In general

1981 The right to inspect corporate records under section 220 and to directors under common law does not extend as a matter of course to private

communications between a person and their counsel simply because they happen to be corporate officers or directors.—*Estate of Polin v. Diamond State Poultry Co.*, No. 6374, 6:368.

⇐ 132 Services under assignment by court

1985 In approving a request for attorneys' fees which seemed high, the court held it was not excessive when the court considered the magnitude of the case, the obstacles facing the plaintiffs at the outset, the expertise of counsel, the contingent nature of the fee prospects facing them at the outset, the effort put forth, the result achieved, and the favorable comparison to fees normally paid to investment bankers for their participation in such transactions.—*Charlip v. Lear Siegler, Inc.*, No. 5178, 10:168.

1985 In determining an award of attorneys' fees, the fact that plaintiffs' actions removed five percent of voting power from the control of the board of directors constitutes a benefit to the corporation and its common shareholders since it permits shareholders to make decisions without being confronted with the knowledge that management has a five percent head start with regard to any particular proposition.—*Good v. Texaco, Inc.*, No. 7501, 10:854.

1985 In determining an award of attorneys' fees, the fact that plaintiffs' actions removed five percent of voting power from the control of the board of directors enhances the voting power of common stockholders since it means that a 5% voting power which potentially could be used to thwart the wishes of a majority of their number, if in the hands of another, will not come into play at all, at least through the period prescribed by the repurchase agreement.—*Id.*

⇐ 141 Specific services and particular cases

1984 The allowance of counsel fees in a derivative suit is a matter left to the discretion of the court.—*Burlington Northern, Inc. v. Sterman*, No. 7050, 10:627.

1978 In Delaware, time and hourly rates are not the most significant element in awarding attorney fees where the result of the litigation is the creation or preservation of a fund.—*Lewis v. Great Western United Corp.*, No. 5397, 4:248.

1978 In determining allowances to counsel in a successful shareholders' suit, consideration should be given to the amount recovered by the action, the standing and ability of counsel, the difficulty of litigation, and, most importantly, the amount of time and effort of counsel in connection with the case.—*Id.*

1978 Although time and effort of counsel are major elements and proper for consideration in setting a fee in a derivative action, it is also proper to estimate the value of a settlement to the corporation as part of fixing the award.—*Id.*

1978 In an action to determine attorneys' fees allocable to a settlement of a derivative action, corporation's failure to object to the amount of counsel's claims was taken to mean that the corporate management considered it a proper amount for value inuring to the corporation.—*Id.*

1978 When fixing a fee allowance in a class or derivative action in Delaware, the results obtained are paramount to the hours spent in obtaining them as a starting point consideration in fixing a fee allowance in a class or derivative suit.—*Id.*

1978 Award of attorney's fees allocable to settlement of a class action was taken from fund of accumulated preferred dividends in order to create less of a burden on the class members.—*Id.*

1978 To allow the plaintiffs and their counsel to go uncompensated for the considerable risk and outlay of expenses that they undertook in achieving a favorable result for the benefit of all preferred shareholders of Great Western is repugnant to the over-

whelming line of authority existing in this state that the overall therapeutic value of such representative suits in the corporate arena justifies a fair but generous reward for success.—*Id.*

1978 In a derivative suit where the fee is to be allocated by the court out of funds which would otherwise belong to others, generosity must not be unreasonably practiced at the enforced expense of others.—*Id.*

1978 Since representative suits are considered therapeutic to the corporate system and are brought to prevent wrongs to the individual shareholders who would otherwise be unable to bear the cost of litigation, success should be generously rewarded in order to encourage other like suits and to discourage misconduct at the corporate level which would give rise to such suits.—*Id.*

1978 In determining a fee allowance for attorneys in a settlement of a derivative action, the fact that a precise monetary value to the corporation cannot be determined does not prevent an allowance where it appears that there had been a substantial benefit.—*Id.*

1978 In measuring the benefit conferred upon a class of former shareholders by a settlement of a class action in order to determine a proper fee award for plaintiffs' attorneys, the fact that the benefit was obtained over a period of less than six months without the necessity of a trial on the merits and extensive discovery should be considered as a tempering element when coupled with the inability to establish a monetary value to the class with mathematical certainty.—*Id.*

1978 In measuring the benefit conferred upon a class of former shareholders by a settlement of a class action in order to determine a proper fee award, the absence of extended litigation, the fact that the settlement doubled the amount of preferred dividends which would otherwise have been available, along with consideration of other benefits incurred led to the conclusion that a fee allowance of $435,000 from the class was proper.—*Id.*

1978 When plaintiffs' counsel in a class and derivative action, following a settlement agreement, filed as part of their application for a fee allowance an affidavit setting forth in considerable detail the nature of their activities which indicated that their efforts were substantial, their failure to include statements of each and every hour expended did not preclude consideration of the merits of their application.—*Id.*

1978 In measuring the benefit conferred upon a class of former shareholders by a settlement of a class action in order to determine a proper fee award, the fact that the settlement doubled the amount of preferred dividends which would otherwise have been paid was of no small significance.—*Id.*

⇐ 150 Effect of premature termination or settlement of action

1981 In awarding lawyer's fees based on benefits received from the settlement of a suit, the amount of benefit affects the percentage employed; if the benefit is very large, a lower percentage or even percentages graduated downward are used.—*Seigenfeld v. Wilcox*, No. 6343, 7:348.

1981 When a settlement, the size of which has been vastly magnified by reason of the number of shares involved, is achieved on a logical and mathematical basis, this factor is to be taken into consideration and applied with the principle that if the benefit achieved by litigation is very large, a lower percentage is to be allowed as a fee for a plaintiff's attorney.—*Id.*

⇐ 155 Allowance and payment from funds in court

1982 When a party or its counsel petitions a court of equity for an allowance of counsel fees, full disclosure is a prerequisite to any

allowance of such fees.—*Loretto Literary & Benevolent Institution v. Blue Diamond Coal Co.*, No. 5980, 8:362.

1982 In determining the amount of counsel fees to be awarded in a lawsuit which did not result in the creation of a common fund inuring to the benefit of a class of litigants, the court's function is to focus on reimbursing the party for reasonable counsel fees actually incurred.—*Id.*

1979 An award of attorney's fees of thirteen percent of a fund created by a class action suit clearly falls within acceptable guidelines of the court of chancery.—*Wayne v. Utilities & Industries Corp., No. 5733; Lindner v. Pearlman, No. 5744; Parine & Parine v. Carter*, No. 5750, 5:174.

AVIATION

I. CONTROL AND REGULATION IN GENERAL, ⇦ 1-50.
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V. AIRPORTS AND SERVICES, ⇦ 211-252.

⇦ 14 **Transfer and incumbrance of aircraft**

1985 Under the intrinsic fairness doctrine, the parent corporation demonstrates that an independent board would have been no more successful in securing the jet aircraft which the subsidiary proves was necessary and thus avoids the damages. The controlling shareholder must demonstrate that its conduct was not a cause of the losses suffered by minority shareholders.—*Trans World Airlines, Inc. v. Summa Corp.*, No. 1607, 10:936.

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II. PETITION, ADJUDICATION, WARRANT, AND CUSTODY OF PROPERTY, ⇦ 11-117(2).
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(F) WAGE EARNERS' PLANS, ⇨ 1101.
(G) RAILROAD ADJUSTMENTS, ⇨ 1201-1205.

⇨ 656 **Stockholders' meeting and elections of officers**

1984 The pendency of bankruptcy proceedings ordinarily will not impair the right of a shareholder to compel an annual meeting and this right will not be disturbed unless a clear case of abuse is made out.—*NKFW Partners v. Saxon Industries, Inc.*, No. 7468, 9:792.

BANKS AND BANKING

I. CONTROL AND REGULATION IN GENERAL, ⇨ 1-21.

II. BANKING CORPORATIONS AND ASSOCIATIONS, ⇨ 22-85.
(A) INCORPORATION, ORGANIZATION AND INCIDENTS OF EXISTENCE, ⇨ 22-34.
(B) CAPITAL, STOCK, AND DIVIDENDS. ⇨ 35-42.
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VI. LOAN, TRUST, AND INVESTMENT COMPANIES, ⇨ 310-317.

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IX. LAND BANKS AND FARM CREDIT, ⇨ 401-450.

X. HOME LOAN BANKS, ⇨ 451-500.

XI. FEDERAL DEPOSIT INSURANCE CORPORATION, ⇨ 501-509.

⇨130(1) Trust funds; in general

1984 Absent actual knowledge by the bank, a constructive trust will not attach to a repayment to a bank even though repayment was from funds impressed with a trust created by statute and diverted from that trust to repay the bank. The statute does not require banks to police the accounts of their contractor-debtors. DEL. CODE ANN. tit. 17, § 802 (1982).—*United Pacific Insurance Co. v. Ripsom*, No. 7056, 10:337.

⇨179 Collateral security

1984 Fact that a bank approached a third party about the sale of notes secured by defendant's stock at a time when the third party was under contract to purchase real estate from defendant did not demonstrate bad faith where nothing in the loan agreement precluded such a sale and there was no evidence that the bank approached the third party for the purpose of inducing him to breach the contract.—*Kirkland v. International Community Corp.*, No. 7577, 9:770.

1984 Fact that a bank sold collateral at below its alleged value did not demonstrate bad faith where debtor gave both oral and written consent to the sale.—*Id.*

⇨275 Jurisdiction and venue

1981 12 U.S.C. § 94 requires that a national bank can only be sued within the district of its establishment.—*Murray's Enterprises, Inc. v. Lincoln Insurance Co.*, No. 835, 6:376.

1981 An exception to 12 U.S.C. § 94 does exist when an action is *in rem*, in which case the bank may be sued where the real property is located.—*Id.*

1981 Although plaintiff's suit concerns real property, if the principal object of the suit does not directly involve the title to real property, the action is *in personam* for purposes of venue under 12 U.S.C. § 94.—*Id.*

⇨315(1) Functions and dealings; in general

1982 Testimony of financial experts is not required in order to arrive at the fair present value of a corporate security in a merger proceeding.—*Smith v. Pritzker*, No. 6342, 8:406.

COMMERCE

I. POWER TO REGULATE IN GENERAL, ⇨ 1-13.5.

II. APPLICATION TO PARTICULAR SUBJECTS AND METHODS OF REGULATION, ⇨ 14-82.
- (A) IN GENERAL, ⇨ 14.5-55.5.
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  1. IN GENERAL, ⇨ 62.20-62.29.
  2. LABOR RELATIONS, ⇨ 62.30-62.39.
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(J) OFFENSES AND PROSECUTIONS, ⇨ 82-82.19.
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1. REVIEW BY COURTS, ⇨ 151-200.
2. ENFORCEMENT BY COURTS, ⇨ 201-214.

⇨ 62.4 Trade associations and exchanges; securities dealings

1983 When a tender offer is made, the offerors must disclose with complete candor all information in their possession germane to the offer. This includes all information that a reasonable shareholder would consider important in deciding whether or not to sell or retain stock.—*Kahn v. United States Sugar Corp.*, No. 7313, 8:593.

COMPROMISE AND SETTLEMENT

⇨ 1-25 Inclusive

⇨ 2 In general

1985 The law favors voluntary settlement of contested issues in the interests of judicial economy. To that end, a settlement which results in a dismissal as to all parties, whether or not with prejudice, is to be favored over one which keeps the litigation in effect as to a single party or issue.—*Chiulli v. Hardwicke Cos.*, No. 6785 & *Hardwicke Cos. v. Hoare*, No. 6929, 10:825.

1985 Delaware policy favors settlement of class action or derivative suits in the interest of judicial economy.—*Citron v. Burns*, No. 7647, 10:830.

1985 Where a stipulated settlement of a class action or derivative suit has been submitted to the court for approval, the matter is examined for reasonableness under the court's business judgment rule.—*Id.*

1985 In a decision on a proposed settlement and dismissal of a conslidated derivative and class action suits, the law favors the voluntary settlement of the contested issues.—*Good v. Texaco, Inc.*, No. 7501, 10:854.

1985 By reviewing intrinsic fairness of a compromise settlement in a derivative or class suit, the court must not defeat the basic purpose behind litigation settlement by affording the parties a rehearsal of trial; rather, the court should exercise its own independent business judgment.—*Id.*

1985 Abuse of discretion is the standard for reviewing the court's exercise of its independent business judgment in deciding the intrinsic fairness of a compromise in a derivative or class action suit.—*Id.*

1985 In passing upon the proposed settlement of a class and derivative action suit, it is not the court's function to make findings of fact.—*Id.*

1983 It is inappropriate for the court to try the issues or the merits of the case or to allow the counsel to do so in the settlement hearing, since the benefits to judicial economy would thereby be lost.—*Khoury v. Oppenheimer*, No. 6734, 8:597.

1983 The fact that plaintiffs will receive a premium for their stock as part of a settlement does not preclude the approval for the settlement.—*Id.*

1979 A proposed settlement of a lawsuit necessarily requires objectors to the settlement to move with utmost promptness so as not to chill the settle-

ment.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:367.

1979 The voluntary settlement of disputes is favored in the law, and it is especially appropriate in complex litigation because it promotes judicial economy.—*Id.*

1979 In reaching a decision as to whether or not to approve a proposed settlement of a derivative shareholders' action, the law favors the voluntary settlement of contested issues and the court need not conduct a rehearsal of a trial.—*Wayne v. Utilities & Industries Corp.*, No. 5733; *Lindner v. Pearlman*, No. 5744; *Parine & Parine v. Carter*, No. 5750, 5:174.

1977 Settlements, when fairly presented and found reasonable by the court, are favored.—*Frick v. American President Lines, Inc.*, No. 3766; 3:570.

⇨3 Subject matter

1977 A settlement hearing must not be a rehearsal of trial, but rather a dispassionate overall view of the basic fairness of the settlement proposed; it is not to hear the evidence.—*Frick v. American President Lines, Inc.*, No. 3766, 3:570.

⇨4 Persons between whom made

1985 In determining whether to approve a proposed settlement of a derivative stockholders' action, the court of chancery is called upon to exercise its own business judgment.—*Chiulli v. Hardwicke Cos.*, No. 6785 & *Hardwicke Cos. v. Hoare*, No. 6929, 10:825.

1985 While the court may modify the proposed terms of a settlement, it should not do so lightly after the parties have negotiated in good faith.—*Id.*

1985 Because of the fiduciary character of a class or derivative suit, the court must participate in the compromise settlement by exercising its own business judgment to insure intrinsic fairness in the circumstances to the rights of all parties.—*Good v. Texaco, Inc.*, No. 7501, 10:854.

1985 Approval of class action settlement requires more than a cursory scrutiny by the court of the issues presented, but the court's function is discharged when the nature of the claim, possible defenses, and legal and factual obstacles facing plaintiff in the event of a trial are considered and the court approves the settlement as reasonable through the exercise of its sound business judgment.—*Id.*

1985 The court of chancery has discretion to require notice under Rule 23(e) notwithstanding the use of the word "shall" in the rule. DEL. CH. CT. R. 23(e).—*Ercklentz v. Inverness Management Corp.*, No. 7167, 10:851.

1985 In the context of voluntary dismissals, several factors are to be considered by the court in exercising its discretion as to whether notice should be provided: (1) the likelihood of intervention of other stockholders, (2) the probability that stockholders were relying upon the pending suit, and (3) the extent of any interest seeking a judicial determination.—*Id.*

1983 The court, in deciding whether to approve a derivative suit settlement, must consider the nature of the claim, the possible defenses to it, the legal and factual obstacles facing the plaintiffs in the event of trial and whether, in the court's own business judgment, the settlement appears reasonable.—*Khoury v. Oppenheimer*, No. 6734, 8:597.

1982 In an action by one seeking to participate in a class action settlement fund, the court must, in determining the eligibility of any claim, be guided by principles of equity consistent with the court's traditional supervisory powers over the administration of settlements.—*Mendich v. Hunt International Resources Corp.*, No. 5912, 7:487.

1979 The holding of a special meeting for minority stockholders to vote on a settlement of a proposed merger appears to negate any contention by the plaintiffs that the majority stockholders are exercising their coercive power to effect a merger for their exclusive benefit.—*Wayne v. Utilities & Industries Corp.*, No. 5733; *Lindner v. Pearlman*, No. 5744; *Parine & Parine v. Carter*, No. 5750, 5:174.

1979 The function of the court in reaching a decision as to whether or not to approve a proposed settlement of a derivative stockholders' action in a situation in which the intrinsic fairness of the settlement must be tested is to exercise its business judgment.—*Id.*

1979 In reviewing an application for settlement of a stockholders' derivative suit, the court must ensure that the interests of the class are represented within the agreement in accordance with the fiduciary duties of the plaintiffs to the remainder of the class.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:367.

1979 The court's duty in reviewing settlements pursuant to DEL. CH. CT. R. 23.1 requires it to consider the nature of the claim, possible defenses to it, legal and factual obstacles facing the plaintiff in the event of trial, and whether the settlement appears reasonable in the court's own business judgment. DEL. CH. CT. R. 23.1.—*Id.*

1979 It is inappropriate to try the issues or merits of the case or to allow counsel to do so in the settlement hearing, since the benefits of judicial economy would thereby be lost.—*Id.*

1978 Although time and effort of counsel are major elements and proper for consideration in setting a fee in a derivative action, it is also proper to estimate the value of a settlement to the corporation as a part of fixing the award.—*Lewis v. Great Western United Corp.*, No. 5397, 4:248.

1978 When plaintiffs' counsel in a class and derivative action, following a settlement agreement, filed as part of their application for a fee allowance an affidavit setting forth in considerable detail the nature of their activities which indicated that their efforts were substantial, their failure to include statements of each and every hour expended did not preclude considerating of the merits of their application.—*Id.*

1978 In determining a fee allowance for attorneys in a settlement of a derivative action, the fact that a precise monetary value to the corporation cannot be determined does not prevent an allowance where it appears that there had been a substantial benefit.—*Id.*

1977 An action for the appraisal of stock is to be deemed a class action insofar as its dismissal or compromise is concerned.—*Frick v. American President Lines, Inc.*, no. 3766, 3:570.

1977 The allowance of interest to any claimant in a final hearing constitutes a matter of discretion on the part of the court.—*Id.*

1976 Substantial weight should be accorded counsel's recommendation that settlement of an action be approved in conformity with the terms agreed where the plaintiff is represented by experienced and qualified counsel.—*Parker v. Hofmann*, No. 5172, 3:549.

⇐11 In general

1982 The court of chancery must judge a proposed settlement of a stockholders' class action by exercising its own business judgment as to the reasonableness of the settlement after considering the nature of the claims and the possible defenses. It is not the function of the court to try the issues of the case.—*Lewis v. Fuqua Industries*, No. 6534, 7:478.

⇐15(2) In general; compromise pending suit

1985 Approval of a proposed settlement of claims alleging wrongdoing of board members under Delaware state law is in no way intended, on grounds of *res judicata* to bring about termination of claims under federal securities laws.—*Good v. Texaco, Inc.*, No. 7501, 10:854.

1979 A proposed settlement of a lawsuit necessarily requires objectors to the settlement to move with utmost promptness so as not to chill the settlement.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:367.

1979 It is inappropriate to try the issues or merits of the case or to allow counsel to do so in the settlement hearing, since the benefits of judicial economy would thereby be lost.—*Id.*

1976 The customary tests which must be applied by a court in passing upon

the propriety and fairness of a proposed settlement of a pending action are the probable validity of the claim asserted, the difficulties to be faced in seeking to collect such claim if and when ultimately reduced to judgment, the expenses and pitfalls to be faced in prospective active litigation and the amount to be paid in compromise or settlement as compared with what might possibly be recovered after trial in the form of a collectible judgment.—*Parker v. Hofmann*, No. 5172, 3:549.

⇦ 19(2) Impeachment or setting aside; opening, correcting, or setting aside

1985 The court's responsibility is to insure that fairness extends to the effect of the settlement on all parties.—*Chiulli v. Hardwicke Cos.*, No. 6785 & *Hardwicke Cos. v. Hoare*, No. 6929, 10:825.

⇦ 23(1) Evidence; presumption and burden of proof

1979 Assumptions of bad faith on the part of management are not recognized by the court in a proceeding for approval of a proposed settlement agreement.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:367.

1979 In the absence of evidence to the contrary, the presumption is that directors acted in good faith in reaching a decision to purchase stock.—*Id.*

CONSPIRACY

I. CIVIL LIABILITY, ⇦ 1-22.
   (A) ACTS CONSTITUTING CONSPIRACY AND LIABILITY THEREFOR, ⇦ 1-14.
   (B) ACTIONS, ⇦ 15-22.

II. CRIMINAL RESPONSIBILITY, ⇦ 23-51.
   (A) OFFENSES, ⇦ 23-41.
   (B) PROSECUTION AND PUNISHMENT, ⇦ 42-51.

⇦ 1 Nature and elements in general

1985 The essence of civil conspiracy is damages.—*Edelman v. Phillips Petroleum Co.*, No. 7899, 10:835.

1981 A civil conspiracy is defined as a combination of two or more persons by concerted action to accomplish some criminal or unlawful purpose.—*Tuckman v. Aerosonic Corp.*, No. 4094, 6:413.

⇦ 2 Combination

1981 A civil conspiracy consists of five elements: (1) two or more persons; (2) an object to be accomplished; (3) a meeting of the minds on the object or course of action; (4) one or more unlawful overt acts; and (5) damages as a proximate result thereof.—*Tuckman v. Aerosonic Corp.*, No. 4094, 6:413.

⇦ 3 Object

1981 A civil conspiracy consists of five elements: (1) two or more persons; (2) an object to be accomplished; (3) a meeting of the minds on the object or course of action; (4) one or more unlawful overt acts; and (5) damages as a proximate result thereof.—*Tuckman v. Aerosonic Corp.*, No. 4094, 6:413.

⇦ 4 Means

1981 A civil conspiracy consists of five elements: (1) two or more persons; (2) an object to be accomplished; (3) a meeting of the minds on the object or course of action; (4) one or more unlawful overt acts; and (5) damages as a proximate result thereof.—*Tuckman v. Aerosonic Corp.*, No. 4094, 6:413.

⇨5 Overt act

1981 A civil conspiracy consists of five elements: (1) two or more persons; (2) an object to be accomplished; (3) a meeting of the minds on the object or course of action; (4) one or more unlawful overt acts; and (5) damages as a proximate result thereof.—*Tuckman v. Aerosonic Corp.*, No. 4094, 6:413.

⇨6 Damages caused

1981 A civil conspiracy consists of five elements: (1) two or more persons; (2) an object to be accomplished; (3) a meeting of the minds on the object or course of action; (4) one or more unlawful overt acts; and (5) damages as a proximate result thereof.—*Tuckman v. Aerosonic Corp.*, No. 4094, 6:413.

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⊂⊃46(1) Necessity of determination; in general

1978 It is the settled policy of Delaware courts to refrain from deciding a constitutional issue unless such determination is essential to the disposition of the case.—*Palmer v Arden-Mayfair, Inc.*, No. 5549, 4:617.

⊂⊃69 Advisory opinions

1984 The court will not render an advisory opinion in advance of litigation or in the absence of a factual situation giving rise to an imminent controversy between the parties.—*Schlossberg v. First Artists Production Co.*, No. 6670, 9:491.

⊂⊃90.1(7) Particular expressions and limitations; labor matters; picketing

1980 This case does not demonstrate the degree of violence necessary to persuade the court to disregard what is normally a constitutional right to express one's views by picketing.—*Getty Refining & Marketing Co. v. Oil Chemical & Atomic Workers International Union, Local #8-898*, No. 6081, 6:220.

⊂⊃275(2) Deprivation of liberty as to occupation or employment; regulation of employment labor

1980 The fourteenth amendment still leaves the state ample discretion in dealing with manifestations of force in the settlement of industrial conflicts.—*Getty Refining & Marketing Co. v. Oil Chemical & Atomic Workers International Union, Local #8-898*, No. 6081, 6:220.

⊂⊃278(1) Deprivation of property in general; in general

1975 Under the facts of this case, the Delaware sequestration procedure meets the requirements set forth in *Fuentes* and *Mitchell* for justifying post-seizure hearings in that there is (1) a sufficient state interest, (2) a need for prompt action, and (3) sufficiently strident judicial control. Consequently, there is no basis for holding a Delaware statute unconstitutional in that it provides for no pre-seizure hearing on the merits. DEL. CODE ANN. tit. 10, § 366.—*Heitner v. Greyhound Corp.*, No. 4514, 1:188.

⊂⊃305 Actions in general

1984 Promoting the market for its products and allegedly causing injury are sufficient to satisfy federal due process requirements for *in personam* jurisdiction.—*Lord & Burnham Corp. v. Four Seasons Solar Products Corp.*, No. 7319, 9:784.

⊂⊃305(5) Actions in general; nonresidents in general

1978 The mere fact that stock of a Delaware corporation, in which a non-resident defendant has a claimed interest, has its situs in Delaware, DEL. CODE ANN. tit. 8, § 169, does not produce the requisite minimum contacts with the state and, therefore, is not sufficient to support substituted service on such a non-resident when the validity of the issuance of such shares of stock is called into question.—*Bolger v. Northern Lumber Co.*, No. 5328, 4:268.

⊂⊃305(6) Actions in general; foreign corporations

1984 To determine the existence of personal jurisdiction pursuant to the Delaware long-arm statute, the court must decide whether jurisdiction is authorized by statute and whether the defendant's due process rights under the fourteenth amendment would be violated by subjecting it to personal jurisdiction in Delaware. DEL. CODE ANN. tit. 10, § 3104(c) (1974).—*Lord & Burnham Corp. v. Four Seasons Solar Products Corp.*, No. 7319, 9:784.

⊂⊃312 Provisional remedies

1975 It is constitutionally proper for Delaware to provide that the situs of capital stock of its corporation is in the home state. Consequently, it cannot be concluded that the sequestration of defendant's stock and stock interests is invalid simply because the stock certificates themselves may be

beyond the Court's jurisdiction. DEL. CODE ANN. tit. 10, § 366.—*Heitner v. Greyhound Corp.*, No. 4514; 1:188.

1975 Under the facts of this case, the Delaware sequestration procedure meets the requirements set forth in *Fuentes* and *Mitchell* for justifying post-seizure hearings in that there is (1) a sufficient state interest, (2) a need for prompt action, and (3) sufficiently strident judicial control. Consequently, there is no basis for holding a Delaware statute unconstitutional in that it provides for no pre-seizure hearing on the merits. DEL. CODE ANN. tit. 10, § 366.—*Id.*

1975 An action commenced by sequestration is initially against the property of the non-resident so as to induce his appearance, and at that point is *quasi-in-rem* at best. If the non-resident is thereafter personally served or enters a general appearance, the action also partakes of an *in personam* character. There is nothing unconstitutional about such a proceeding.—*Id.*

⇦ 315 Judgment and execution

1984 The due process requirement for the exercise of *in personam* jurisdiction is satisfied if the defendant's contacts with Delaware are such that compelling it to defend itself in that state would be consistent with traditional notions of fair play and substantial justice. U.S.C.A. Const. amend. 14.—*Lord & Burnham Corp. v. Four Seasons Solar Products Corp.*, No. 7319, 9:784.

CONTRACTS

I. REQUISITES AND VALIDITY, ⇦ 1-142.
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V. PERFORMANCE OR BREACH, ⇦ 275-323(3).

VI. ACTIONS FOR BREACH, ⇦ 324-355.

⇨1 Nature and grounds of contractual obligation

1978 The mere fact that the bargain made in the settlement agreement may be of less benefit to defendants than they had anticipated does not relieve them of their responsibility under the terms of the settlement agreement.—*Wilmington Trust v. Lee*, Nos. 4000, 4241 & 4924, 4:572.

⇨14 Intent of parties

1984 The criteria for deciding if a contract exists is the intention of the parties as evidenced by their objective conduct and manifestations at the critical time.—*Pennzoil Co. v. Getty Oil Co.*, No. 7425, 10:260.

1984 Whether or not a binding agreement exists turns on the intent of the parties at the time as found by the trier of facts.—*Id.*

⇨16 Offer and acceptance in general

1981 A communication which puts a person merely on notice that an option to an agreement is going to be exercised cannot at the same time amount to the act required by the agreement.—*Shields Development Company v. Shields*, No. 5530, 7:354.

⇨18 Making and communication of offer

1984 Where the evidence is insufficient to show that an offer for the proposed purchase of stock was ever communicated to the intended seller, no offer can be deemed to have been made.—*Bershad v. Curtiss-Wright Corp. and Kulik v. Dorr-Oliver, Inc.*, Nos. 5827 & 5830, 9:156.

⇨22(3) Acceptance of offer and communication thereof; necessity of communicating acceptance

1981 A communication which puts a person merely on notice that an option to an agreement is going to be exercised cannot at the same time amount to the act required by the agreement.—*Shields Development Company v. Shields*, No. 5530, 7:354.

⇨31 Necessity of writing in general

1978 Under the Uniform Commercial Code, an oral agreement for the purchase of stocks does not create an enforceable contract. DEL. CODE ANN. tit. 6, § 8-319.—*Lakeshore Deli, Inc. v. Landis Wilson*, No. 715, 5:143.

⇨32 Agreements to be reduced to writing

1978 Under the Uniform Commercial Code, an oral agreement for the purchase of stocks does not create an enforceable contract. DEL. CODE ANN. tit. 6, § 8-319.—*Lakeshore Deli, Inc. v. Landis Wilson*, No. 715, 5:143.

⇨54 Sufficiency in general

1983 In consideration for settlement of a derivative suit, prophylactic measures do benefit the corporation and are sufficient to justify the approval of a settlement.—*Khoury v. Oppenheimer*, No. 6734, 8:597.

⇨54(2) Sufficiency in general; withholding competition

1984 A promise of continued employment is sufficient consideration to support a restrictive covenant against competition.—*Comfort, Inc. v. McDonald*, No. 1066(S), 9:420.

1984 Where an employee has given notice of his intention to terminate his employment and, without actually terminating, then executes a written employment contract to remain with his employer, the written contract may constitute a rehiring of the employee on new terms, negating a need for any additional consideration for the restrictive covenant.—*Id.*

⇨93(1) Mistake; in general

1978 Where both parties to a contract correctly interpret a law under which the parties have made the contract, one party cannot then claim mistake due to dissatisfaction.—*Wilmington Trust v. Lee*, Nos. 4000, 4241 & 4924, 4:572.

⇨94(1) Fraud and misrepresentation; in general

1981 A party and his accountant stand

in a fiduciary relationship and as such the party is owed a duty of utmost candor and good faith.—*Krieger v. Crisconi*, No. 6017, 6:408.

1981 When a party continues an investment after learning of a material misstatement as to his original investment decision, and when he sells his interest to a third party without an effort to mitigate his damages by seeking to sell his interest back to the party making the material mistatement, any claim of damages against the party that made the misstatement is lost.—*Id.*

⇐ 94(3) Fraud and misrepresentation; intent to deceive

1984 Material misrepresentations, even though innocently made, may be sufficient to warrant rescission in a court of equity.—*Craft v. Bariglio*, No. 6050, 9:161.

⇐ 94(4) Fraud and misrepresentation; representations as to contents of a writing

1984 Justifiable reliance upon defendant's representations can be shown where a reasonable person would consider such representations to be important in determining his course of action.—*Craft v. Bariglio*, No. 6050, 9:161.

⇐ 94(7) Fraud and misrepresentation; representations of opinion or law

1984 Mere expressions of opinion as to probable future results, when clearly made and understood as such, do not constitute false representations even though they may relate to material matters.—*Craft v. Bariglio*, No. 6050, 9:161.

1984 What might be considered to be a mere matter of opinion when expressed to one in an equal bargaining position may rise to the level of a misstatement of fact when made by one with special or superior knowledge.—*Id.*

⇐ 108(2) Public policy in general; particular contracts

1981 An employment contract which restricts the employee from working for a competing ambulance service may be contrary to public policy.—*Delaware Medical Services Corps. v. Delaware Ambulance Service, Inc.*, No. 6339, 6:356.

⇐ 116(1) In general; in general

1984 In enforcing restrictive covenants, the court should seek to protect the plaintiff without unduly punishing the defendant.—*Comfort, Inc. v. McDonald*, No. 1066(S), 9:420.

⇐ 116(2) In general; restriction necessary for protection

1975 Restrictive covenants in employment contracts which restrain competition are enforceable if the restraint is reasonable with respect to time and area and is reasonably necessary for the protection of the employer.—*East Coast Resorts, Inc. v. Lynch*, No. 553, 1:452.

⇐ 117 General or partial restraint

1984 A court of equity will not enforce a noncompetition provision of an employment contract if to do so would impose an unusual hardship on a former employee.—*Burris Foods, Inc. v. Razzano*, No. 1077, 9:767.

1981 Employment contracts with specific language restricting the employee from accepting employment with a competing business does not prohibit him from operating his own business in competition with his former employer.—*Delaware Medical Service Corps. v. Delaware Ambulance Service, Inc.*, No. 6339, 6:356.

1980 A covenant not to compete will generally be found to be reasonable if it protects the legitimate interests of the employer, imposes no undue hardship on the employee and is not injurious to the public.—*Bunnell*

Plastics, Inc. v. Gamble, No. 5913, 6:331.

A covenant designed to protect a bona fide trade secret will be sustained if not unreasonably broad not only as to territory and time but also as to the subject matter of the covenant itself.—*Id.*

⇐117(1) General or partial restraint; nature of business to which contract relates

1980 Restrictive covenant prohibiting employee from competing with employer for two years after termination of employment will be given effect to the extent that it is reasonable.—*Bunnell Plastics, Inc. v. Gamble*, No. 5913, 6:331.

⇐117(2) General or partial restraint; limitations as to time and place in general

1984 A former employer may seek enforcement of a covenant not to compete through the medium of equitable relief.—*Burris Foods, Inc. v. Razzano*, No. 1077, 9:767.

1984 A restrictive covenant not to compete is enforceable provided that it is reasonable in time and scope and essential for the protection of the employer's economic interests.—*Id.*

1984 Where employees sign contracts containing noncompetition provisions with their employer and subsequently enter into new positions where their knowledge of their former employer's business will not result in economic loss to it, the noncompetition provision will not be enforced.—*Id.*

1984 A covenant not to compete is geographically reasonable when restricted to the area where the plaintiff actively conducts business.—*Comfort, Inc. v. McDonald*, No. 1066(S), 9:420.

1984 When a plaintiff demonstrates a likelihood of success on the merits and a likelihood of irreparable injury, the court may restrain a defendant from acting in contravention of a restrictive covenant.—*Id.*

1975 Restrictive covenants in employment contracts which restrain competition are enforceable if the restraint is reasonable with respect to time and area and is reasonably necessary for the protection of the employer.—*East Coast Resorts, Inc. v. Lynch*, No. 553, 1:452.

⇐117(3) General or partial restraint; extent of territory embraced in general

1984 A covenant not to compete is geographically reasonable when restricted to the area where the plaintiff actively conducts business.—*Comfort, Inc. v. McDonald*, No. 1066(S), 9:420.

⇐143(1) Application to contracts in general; in general

1984 If competent parties, uninfluenced by improper forces, bind themselves by an agreement which they later realize is improvident, they may blame themselves alone, and they may not importune the courts for relief.—*E.I. Du Pont De Nemours & Co. v. Shell Oil Co.*, No. 6696, 9:446.

⇐143(3) Application to contracts in general; rewriting, remaking, or revising contracts

1984 Where parties bargained for and obtained the right to openly and aggressively compete against each other, the court will intervene to upset the natural order of the marketplace by rewriting the agreement.—*E.I. Du Pont De Nemours & Co. v. Shell Oil Co.*, No. 6696, 9:446.

⇐143.5 Construction as a whole

1984 In interpreting an agreement, it is not enough to look at the end result; rather there must be an examination of the relevant documents and surrounding circumstances and a determination of things like custody, control, and title before the issue can be

resolved.—*E.I. Du Pont De Nemours & Co. v. Shell Oil Co.*, No. 6696, 9:446.

⇐155 Construction against party using words

1984 Where there is to be any construction of an agreement, it must be construed against the drafter.—*E.I. Du Pont De Nemours & Co. v. Shell Oil Co.*, No. 6696, 9:446.

⇐169 Extrinsic circumstances

1980 Covenants not to compete are to be construed in accordance with what the parties intended at the time that a contract was signed, viewed in light of the surrounding facts and circumstances.—*Bunnell Plastics, Inc. v. Gamble*, No. 5913, 6:331.

⇐170(1) Construction by parties; in general

1981 It is the duty of the court to give effect to the intention of the parties where it is not wholly at variance with an accepted legal interpretation of the terms of a contract, and a practical construction placed by the parties on the instrument is the best evidence of their intention.—*Shields Development Company v. Shields*, No. 5530, 7:354.

⇐193 Money, investments and securities

1971 Time is not to be regarded as essential because of the fact that the subject matter of the contract is corporate stock.—*Tassette, Inc. v. M.A. Gerett, Inc.*, No. 2722, 2:152.

⇐211 Time as of the essence of the contract

1971 In equity, unlike at law, time is not generally of the essence unless made so by the contract itself, or from the nature and situation of the subject matter, or by express notice given, requiring the contract to be closed or rescinded at a stated time.—*Tassette, Inc. v. M.A. Gerett, Inc.*, No. 2722, 2:152.

⇐215(1) Duration of contract in general; in general

1975 Where there are sufficient facts to show that an employee subject to a covenant not to compete within a period of one year is terminated from his employment at the wish of his employer, the restrictive covenant not to compete is no longer effective.—*East Coast Resorts, Inc. v. Lynch*, No. 553, 1:452.

⇐217 Option to renew or terminate contract

1981 Contracts which are silent as to termination are terminable at will by either party upon reasonable notice.—*A. R. Dervaes Co. v. Houdaille Industries, Inc.*, No. 6471, 7:173.

1981 Where an agent or distributor expends a substantial sum of money or gives something of considerable value to develop a distributorship system, this constitutes sufficient consideration to require that the arrangement continue for a reasonable time to allow the distributor to recoup expenditures incurred in reliance upon the agreement.—*Id.*

⇐265 Restoration of former status of parties

1984 Rescission will not be granted unless the court can and does restore the parties substantially to their positions prior to the contract.—*Craft v. Bariglio*, No. 6050, 9:161.

⇐270(2) Time for rescission and laches; rescission for invalidity of assent

1984 A party who discovers he has been misled into entering a contract by false representations must act with reasonable diligence if it is his intention to seek rescission as opposed to affirming the contract and suing for damages. He cannot derive all benefits from the transaction and then when called on to comply with its terms, claim misrepresentation.—*Craft v. Bariglio*, No. 6050, 9:161.

CORPORATIONS

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XII. FOREIGN CORPORATIONS, ⊂ 631-391.

⊂ 1.1(1) Status of corporation in general; corporate status in general

1978 Internal affairs of a corporation are to be governed by the laws of the state of incorporation.—*Palmer v. Arden-Mayfair, Inc.*, No. 5549, 4:617.

⊂ 1.3 Distinct entity in general, corporation as

1977 Absent fraud, the separate entity of a corporation is to be recognized.—*Terry Apartments Associates v. Associated-East Mortgage Co.*, No. 4778, 3:560.

⊂ 1.4(1) Disregarding corporate entity in general; general considerations

1981 The fact that a corporation has only two corporate officers would not of itself necessarily indicate that the corporation lacks such independent reason for existence as would justify piercing the corporate veil so as to confer personal jurisdiction over one of its two nonresident officers.—*Gebelein v. Perma-Dry Waterproofing Co.*, No. 6210, 7:309.

⊂ 1.4(3) Disregarding corporate entity in general; fraud or illegal acts

1977 The corporate veil can be pierced only in the interest of justice, when such matters as fraud, contravention of law or contract, public wrong, or where equitable consideration among members of the corporation require it.—*Terry Apartments Associates v. Associated-East Mortgage Co.*, No. 4778, 3:560.

⊂ 1.4(4) Disregarding corporate entity in general; instrumentality, agency, or alter ego

1981 The test for piercing the corporate veil for jurisdictional purposes requires a factual showing that the corporation has no independent reason for existence and that its sole purpose is to provide a means for doing the act and bidding of the individual.—*Gebelein v. Perma-Dry Waterproofing Co.*, No. 6210, 7:309.

⊂ 1.5(2) Separate corporations, disregarding separate entities, identity of officers or stockholders

1979 An outside business organization has no independent fiduciary duty not to use a portion of that acquired to defray the costs of acquisitions.—*Field v. Allyn*, No. 5951, 5:357.

⊂ 1.5(3) Separate corporations, disregarding separate entities; parent and subsidiary corporations

1984 A parent company is not liable for breaches of fiduciary duty by its subsidiary without piercing the corporate veil.—*J. Royal Parker Associates, Inc. v. Parco Brown & Root, Inc.*, No. 7013, 10:215.

1979 An outside business organization has no independent fiduciary duty not to use a portion of that acquired to defray the costs of acquisition.—*Field v. Allyn*, No. 5951, 5:357.

⇨15 Number and qualification of directors and officers

1981 Our corporation law specifically permits a Delaware corporation to be operated by one director, and all corporate offices to be held by one person. DEL. CODE ANN. tit. 8, §§ 141(b) & 242(a).—*Gebelein v. Perma-Dry Waterproofing Co.*, No. 6210, 7:309.

⇨18 Certificate or articles of association

1978 The rights of the preferred stockholders must be determined from the language of the certificate of rights because preferred stockholders have no rights other than those acquired by contract and which are clearly expressed in the document conferring the rights.—*Wood v. Coastal States Gas Corp.*, No. 5696, *Hook v. Wyatt*, No. 5719, 5:326.

1978 The rights of the preferred stockholders vis-a-vis the common stockholders is determined by the language of the certificate of rights.—*Id.*

1978 Any sharing by the preferred stockholders in the new stock would be unfair to the common stockholders who are entitled to all dividends declared by defendant except as limited by the certificate of rights.—*Id.*

1978 The argument that the restructuring of a corporation, when considered as a whole, constitutes a recapitalization, even though none of the singular acts would constitute a recapitalization, fails in view of the plain meaning of the language in the certificate of rights.—*Id.*

⇨24 Organization of corporation

1979 Although a corporation is legally formed, if no stock is ever authorized and issued, the parties sign personally for liabilities, share equally in the profits and losses of the enterprise, and contribute equally when undercapitalized, the enterprise will be deemed a partnership.—*Miller v. Gilbert*, No. 5567, 5:502.

⇨31 Nature of franchise to be a corporation

1984 Under Delaware statute, any documents or information regarding the future value, earning prospects, or future prospects of corporate stock values is relevant and discoverable, provided that the plaintiffs can show that they appear reasonably calculated to lead to the discovery of evidence which would be admissible at trial. DEL. CH. CT. R. 26(b)(1) (1974).—*Cede & Co. v. Technicolor, Inc.*, No. 7129, 10:158.

⇨32 Evidence of corporate existence

1984 Under Delaware statute, any documents or information regarding the future value, earning prospects, or future prospects of corporate stock values is relevant and discoverable, provided that the plaintiffs can show that they appear reasonably calculated to lead to the discovery of evidence which would be admissible at trial. DEL. CH. CT. R. 26(b)(1) (1974).—*Cede & Co. v. Technicolor, Inc.*, No. 7129, 10:158.

⇨58 Violation and enforcement

1978 Pending the outcome of appeals in California on the same matter, there is no reason for a corporation to conduct its annual meeting for election of directors in any manner other than that prescribed by its Delaware charter and bylaws. DEL. CODE ANN. tit. 8, § 211.—*Palmer v. Arden-Mayfair, Inc.*, No. 5549, 4:617.

⇨70 In general

1980 The court, as a condition to granting the stay, can require that the corporation issue no more stock and no more stock options, pending the outcome of the appeal, nor allow the corporation to attempt any change in the shareholder structure of the corporation during that period.—*Grynberg v. Burke*, No. 5198, 6:226.

⇨74 Right to subscribe

1978 No stockholder of a Delaware corporation shall have any preemptive rights to subscribe to addi-

tional issues of stock unless the certificate of incorporation expressly so provides. DEL. CODE ANN. tit. 8, § 102(b)(3).—*Savin Business Machines Corp. v. Rapifax Corp.*, No. 5331, 4:578.

⊂⊃ 75 Contract of subscription in general

1977 The status of a stockholder in a corporation is not dependent on the issuance to him of a certificate of stock, a certificate being only an indicia of ownership or a muniment of title, rather stockholder status is created by a subscription for stock and the acceptance of such subscription by the corporation.—*Brown v. Fenimore*, No. 4097, 3:552.

⊂⊃ 76 Making, requisites, and validity

1977 Issuance of original shares of corporate stock in violation of constitutional provision that stock shall not be issued by corporation except for money paid, labor done, personal property, or real estate or leases actually acquired by corporation does not make subscription contract ulta vires or unlawful. DEL. C. CONST. art. 9, § 3.—*Brown v. Fenimore*, No. 4097, 3:552.

⊂⊃ 94 Nature and necessity of scrip

1977 The status of a stockholder in a corporation is not dependent on the issuance to him of a certificate of stock, a certificate being only an indicia of ownership or a muniment of title, rather stockholder status is created by a subscription for stock and the acceptance of such subscription by the corporation.—*Brown v. Fenimore*, No. 4097, 3:552.

⊂⊃ 97 Authority to issue

1978 Where a corporation in financial distress issues stock as a means to raise needed capital, its directors are given considerable latitude in fixing the price for the issuance.—*Savin Business Machines Corp. v. Rapifax Corp.*, No. 5331, 4:578.

⊂⊃ 98 Issuance and delivery in general

1984 The valuation of the worth of a security to be issued is a question on which reasonable persons may differ.—*Fisher v. United Technologies Corp.*, No. 5847, 10:194.

⊂⊃ 99(1) Issue for unauthorized or insufficient consideration; in general

1978 Lawful consideration includes cash, labor, personal property or real property or leases thereof. DEL. CODE ANN. tit. 8, § 152.—*Avigdor v. Avbrco, Inc.*, No. 5688, 5:151.

1978 When evidence was not introduced at trial as to the sufficiency of consideration for shares of stock an order for inspection of the books shall not consider the subject.—*Id.*

⊂⊃ 99(2) Issue for unauthorized or insufficient consideration; issuance of stock in payment of property or services

1978 Lawful consideration includes cash, labor, personal property or real property or leases thereof. DEL. CODE ANN. tit. 8, § 152.—*Avigdor v. Avbrco, Inc.*, No. 5688, 5:151.

1978 When evidence was not introduced at trial as to the sufficiency of consideration for shares of stock an order for inspection of the books shall not consider the subject.—*Id.*

⊂⊃ 99(3) Issue for unauthorized or insufficient consideration; sale of stock at less than par value or less than price fixed in charter

1978 Lawful consideration includes cash, labor, personal property or real property or leases thereof. DEL. CODE ANN. tit. 8, § 152.—*Avigdor v. Avbrco, Inc.*, No. 5688, 5:151.

1978 When evidence was not introduced at trial as to the sufficiency of consideration for shares of stock an order for inspection of the books shall not consider the subject.—*Id.*

⇐104 Estoppel to allege invalidity

1977 Where a party to an agreement to distribute shares of the corporation with knowledge, actual or imputed, of the actual contribution of the other parties acquiesced in the consummation of the transaction and issuance of stock without consideration or for insufficient consideration, he will be barred from complaining against its issue.—*Brown v. Fenimore*, No. 4097, 3:552.

⇐110 Cancellation of certificates

1980 An issuance of stock solely for the purpose of perpetuating or bringing about control is a breach of duties of a director.—*Jaffe v. Regensberg*, No. 5965, 6:318.

⇐111 Assignability of shares in general

1984 The owners of stock in a Delaware corporation may sell their shares of stock to whomever they please for whatever consideration they desire unless prevented from doing so by some restriction on the transfer of the shares.—*Cahill v. Green*, No. 1094, 10:155.

⇐111½ Statutory provisions

1978 Under the Uniform Commercial Code, an oral agreement for the purchase of stocks does not create an enforceable contract. DEL. CODE ANN. tit. 6, § 8-319.—*Lakeshore Deli, Inc. v. Landis Wilson*, No. 715, 5:143.

1978 A written restriction on the transfer of a security of a corporation may be enforced against the holder of the restricted security. DEL. CODE ANN., tit. 8, § 202 and DEL. CODE ANN., tit. 6, § 8-204.—*Id.*

⇐113 Restriction of right to transfer

1985 A standstill agreement does not constitute a restriction on the transferability of the Phillips shares. DEL. CODE ANN. tit. 8, § 202(c)(4).—*Edelman v. Phillips Petroleum Co.*, No. 7899, 10:835.

1984 The owners of stock in a Delaware corporation may sell their shares of stock to whomever they please for whatever consideration they desire unless prevented from doing so by some restriction on the transfer of the shares.—*Cahill v. Green*, No. 1094, 10:155.

1981 An agreement among shareholders restricting the sale of corporate stock is an appropriate device for assuring a succession in interest among persons most likely to act harmoniously with one another as shareholders.—*Shields Development Company v. Shields*, No. 5530, 7:354.

1981 An agreement among shareholders which gives the corporation the option to purchase their shares before they can be disposed of to others is generally considered valid as between the parties and as against transferees with notice.—*Id.*

1981 The purpose of restrictive endorsements on stock certificates is to protect a purchaser for value who takes without notice of the existence of the stock purchase agreement. The absence of appearance of the restriction on the certificate itself does not invalidate the restriction as applied to one who takes with notice.—*Id.*

1978 A written restriction on the transfer of a security of a corporation may be enforced against the holder of the restricted security. DEL. CODE ANN., tit. 8, § 202 and DEL. CODE ANN., tit. 6, § 8-204.—*Lakeshore Deli, Inc. v. Landis Wilson*, No. 715, 5:143.

⇐114 . Requisites of transfer in general

1975 Where over 55% of Debenture holders have already accepted an Exchange Offer, the matter of acceptance of the offer is most appropriately left to the judgment and discretion of the holders of those Debentures.—*Farland v. Wills*, No. 4888; *Bank of America v. GAC Properties, Inc.*, No. 4914, 1:467.

⇐116 Contract in general

1982 Stockholders are not required to accept tender offers; each can determine for himself if the offer is fair to him.—*Lewis v. Fuqua Industries*, No. 6534, 7:478.

1978 Under the Uniform Commercial

Code, an oral agreement for the purchase of stocks does not create an enforceable contract. DEL. CODE ANN. tit. 6, § 8-319.—*Lakeshore Deli, Inc. v. Landis Wilson*, No. 715, 5:143.

⇐118 Performance of contract

1971 Time is not to be regarded as essential because of the fact that the subject matter of the contract is corporate stock.—*Tassette, Inc. v. M.A. Gerett, Inc.*, No. 2722, 2:152.

⇐121(1) Remedies; in general

1971 Where stock is not purchasable in the market and its value is not easily ascertainable, specific performance of the contract may be enforced.—*Tassette, Inc. v. M.A. Gerett, Inc.*, No. 2722, 2:152.

⇐121(5) Remedies; evidence

1981 An option given by one shareholder to another to purchase his shares at death at their book value is enforceable against the personal representative of the deceased shareholder where it is clear that the parties were fully aware that book value was less than fair market value and where the agreement was motivated by a desire to keep the shares from falling into the hands of another.—*Shields Development Company v. Shields*, No. 5530, 7:354.

⇐121(7) Remedies; damages or amount of recovery

1971 It is generally held that specific performance of contracts for the sale or delivery of personal property will not be decreed, because money damages will ordinarily enable the party to purchase goods of like kind and quality in the market place, and the rule applies to corporate stocks and bonds which are traded in the market.—*Tassette, Inc. v. M.A. Gerett, Inc.*, No. 2722, 2:152.

⇐129 Necessity

1976 A purported letter of objection or demand is void if it is not written by the owner of record. DEL. CODE ANN. tit. 8, § 262(b).—*In re Engle v. Magnavox Co.*, No. 4896, 4:535.

1976 Beneficial owners of shares cannot be a party to an appraisal proceeding if the shares were surrendered, for the consideration provided by the terms of the merger, by a brokerage house or other record owner. DEL. CODE ANN. tit. 8, § 262(b).—*Id.*

⇐130 Duty to make or allow

1975 If court process issued subsequent to a presentation for registration will protect an issuer from failure to register the transfer, then a sequestration order issued prior to such presentment is no less protective. DEL. CODE ANN. tit. 5A, § 8-401(1)(c); DEL. CODE ANN. tit. 5A, § 8-403(2)(a).—*Heitner v. Greyhound Corp.*, No. 4514, 1:188.

⇐132 Making and sufficiency

1979 Absent a showing of imminent, irreparable harm, a preliminary injunction will not issue.—*Cascella v. GDV, Inc.*, No. 5899, 5:519.

⇐135 Rights and liabilities of owner of stock registered in another's name

1976 A purported letter of objection or demand is void if it is not written by the owner of record. DEL. CODE ANN. tit. 8, § 262(b).—*In re Engle v. Magnavox Co.*, No. 4896, 4:535.

1976 Beneficial owners of shares cannot be a party to an appraisal proceeding if the shares were surrendered, for the consideration provided by the terms of the merger, by a brokerage house or other record owner. DEL. CODE ANN. tit. 8, § 262(b).—*Id.*

⇐136 Rights of creditors of transfer

1979 Absent a showing of imminent, irreparable harm, a preliminary injunction will not issue.—*Cascella v. GDV, Inc.*, No. 5899, 5:519.

⇐137 Ratification of invalid transfer

1979 Absent a showing of imminent, irreparable harm, a preliminary injunction will not issue.—*Cascella v. GDV, Inc.*, No. 5899, 5:519.

⇐138 Setting aside transfer

1980 One factor for the court to consider is whether management has utilized its extended tenure under the stay to enter a loan agreement which would give a third party an independent right in its own stead to exercise the option so as to assume control of the corporation.—*Grynberg v. Burke*, No. 5798, 6:230.

⇐149 Bona fide purchaser

1975 Where one makes a bona fide acquisition of stock from an owner who has been enjoined from transferring it, without knowledge of such restraint, and consequently where the stock itself was never before the court, his title is not necessarily defeated because of the existence of the *in personam* order against his transferor. However, the result is not the same if the action is a *quasi-in-rem* proceeding to seize the stock itself.—*Heitner v. Greyhound Corp.*, No. 4514, 1:188.

⇐151 Division of profits in general

1978 Where the preferred stockholders have no preference as to specific earnings or assets of a corporation, a contention that the distribution by the corporation of a new common stock to the corporation's common stockholders as a dividend would constitute an adverse change in the preferences of the existing preferred stockholders as to the assets of the corporation is not persuasive.—*Wood v. Coastal States Gas Corp.*, No. 5696; *Hook v. Wyatt*, No. 5719, 5:326.

⇐152 Declaration of dividends

1975 The Delaware statute forbids a corporation from purchasing its own capital stock when the capital of the corporation is impaired or when such purchase would cause any impairment of the corporation, and while a formal appraisal is not required, the directors are under a duty to evaluate the assets on the basis of acceptable data and by standards which they are entitled to believe reasonably reflect present values. DEL. CODE ANN. tit. 8, § 160.—*Farland v. Wills*, No. 4888; *Bank of America v. GAC Properties, Inc.*, No. 4914, 1:467.

⇐155(1) Ordinary stock; what constitutes dividends

1978 Distribution of securities to the common stockholders of defendant corporation (other than common stock of defendant corporation) without adjustment of the preferred stockholders' rights of conversion can be authorized by the certificate of rights and held to be a dividend.—*Wood v. Coastal States Gas Corp.*, No. 5696, *Hook v. Wyatt*, No. 5719, 5:326.

⇐155(3) Ordinary stock; stock entitled to share in dividends

1978 Where the settlement plan provides for a distribution of new stock to the preferred stockholders, the rights of the common stockholders would be violated since they are entitled to all dividends except as secured for the preferred stockholders by the certificate of rights.—*Wood v. Coastal States Gas Corp.*, No. 5696, *Hook v. Wyatt*, No. 5719, 5:326.

1978 Any sharing by the preferred stockholders in the new stock would be unfair to the common stockholders who are entitled to all dividends declared by defendant except as limited by the certificate of rights.—*Id.*

⇐156 Preferred or other special stock

1978 Where the settlement plan provides for a distribution of new stock to the preferred stockholders, the rights of the common stockholders would be violated since they are entitled to all dividends except as secured for the preferred stockholders by the certificate of rights.—*Wood v. Coastal States Gas Corp.*, No. 5696, *Hook v. Wyatt*, No. 5719, 5:326.

1978 Any sharing by the preferred stockholders in the new stock would be unfair to the common stockholders who are entitled to all dividends declared by defendant except as limited by the certificate of rights.—*Id.*

1978 Where the language in the certificate of rights is unambiguous, the preferred stockholders may not be entitled to participate in defendant's dividend of the new stock.—*Id.*

1976 The rights of preferred shareholders are contract rights; thus, in interpreting corporate provisions with regard to stock preferences the same method is applied as that which is followed in interpreting written contracts generally.—*Maxwell v. Aristar, Inc.*, No. 4798, 4:530.

1976 In reviewing an instrument creating stock preferences, where the language is contradictory or ambiguous, or where its meaning is doubtful, or such that it is susceptible of two constructions, one of which makes it fair, customary and such as prudent men would naturally execute, while the other makes it inequitable, unusual, or such as reasonable men would not be likely to enter into, the interpretation which makes it rational and probable must be preferred to that which makes it unusual or unfair.—*Id.*

⇐170 Who are members or stockholders

1984 A beneficial owner who is not a stockholder of record is not entitled to an inspection of the stockholder list. DEL. CODE ANN. tit. 8, § 220.—*Devon v. Pantry Pride, Inc.*, Nos. 7843 & 7849, 10:183.

1976 A purported letter of objection or demand is void if it is not written by the owner of record. DEL. CODE ANN. tit. 8, § 262(b).—*In re Engle v. Magnavox Co.*, No. 4896, 4:535.

1976 Beneficial owners of shares cannot be a party to an appraisal proceeding if the shares were surrendered, for the consideration provided by the terms of the merger, by a brokerage house or other record owner. DEL. CODE ANN. tit. 8, § 262(b).—*Id.*

⇐174 Nature of relation

1979 Once one becomes a majority shareholder, he owes a duty to the minority, regardless of how he came by his majority position.—*Field v. Allyn*, No. 5951, 5:357.

1979 Corporate directors owe a fiduciary duty to the stockholder of a Delaware corporation. The burden is imposed upon the corporation to show that there is a valid corporate purpose for limiting the offer to purchase shares and that in doing so it has not unduly favored one group over another.—*Fisher v. Moltz*, No. 6068, 5:530.

1977 Stockholders may act as agents for their corporations.—*Thomas v. Kempner*, Nos. 4138 & 4174, 5:131.

1978 Those who control corporate machinery owe a fiduciary duty to the minority in the exercise thereof over corporate powers and property, and the use of such power to perpetuate control is a violation of that duty.—*Savin Business Machines Corp. v. Rapifax Corp.*, No. 5331, 4:578.

1978 It is within the responsibility of an equity court to scrutinize a corporate act when it is alleged that its purpose violates a fiduciary duty owed to minority stockholders.—*Id.*

1978 The fiduciary obligation of the majority to the minority would not seem to be affected by the mere act of increasing the already existing control of the corporate machinery which gives rise to that obligation.—*Id.*

1978 The majority's act of increasing its representation through the purchase of authorized stock equally available to the minority shareholders does not, of itself, constitute a breach of the fiduciary duty owed the minority as will support a preliminary injunction.—*Id.*

⇐178 Rights as creditors of corporation

1979 Where, by virtue of the terms of a merger, a shareholder of the now

defunct corporation is converted into a creditor of the surviving corporation as of the date of the merger becoming effective, the shareholder loses his standing to maintain a derivative action on behalf of the defunct corporation.—*Weinberger v. UOP, Inc.*, No. 5642, 5:158.

⊂⊃180 Management of corporate affairs in general

1985 Under the intrinsic fairness doctrine, the parent corporation must demonstrate that an independent board would have been no more successful in securing the jet aircraft which the subsidiary proves were necessary and thus avoid the damages. The controlling shareholder must demonstrate that its conduct was not a cause of the losses suffered by minority shareholders.—*Trans World Airlines, Inc. v. Summa Corp.*, No. 1607, 10:936.

1975 In order to establish domination and control by a minority stockholder there must be shown some actual exercise of direction over corporate conduct in such a way as to comport with the wishes or interests of the corporation (or persons) doing the controlling.—*Liboff v. Allen*, No. 2669, 2:350.

1975 A mere potential for minority control when bootstrapped to an end result within the general range of that desired by the party possessed of such poential does not automatically rise to a level of proof of control or domination.—*Id.*

⊂⊃181 Inspection of corporate books and records

1982 Where plaintiff shareholder sues for production of a stocklist and it is disputed by the parties as to whether the list is sought for the purpose of contacting shareholders in an effort to prevent the sale of the asset to a third party, the financial status of the shareholder is irrelevant to his right to obtain a stocklist. Whether or not he has sufficient assets to attract other shareholders to his stated project is not a basis for the corporation to decide whether or not he is entitled to contact those other shareholders.—*Patterson v. Tribune Co.*, No. 6716, 7:492.

1981 Where proper purpose is shown, a shareholder's rights to inspect the corporate books and records under DEL. CODE ANN. tit. 8, § 220 is virtually absolute.—*Estate of Polin v. Diamond State Poultry Co.*, No. 6374, 6:368.

1971 Court rulings concerning an apparently unlisted security and involving an apparently fraudulent corporate enterprise antedating by many years any securities regulations, may no longer be looked on as precedents in a valuation case where the securities of such corporation are listed and otherwise controlled.—*Business Capital Corp. v. Interphoto Corp.*, No. 3613, 2:340.

⊂⊃181(1) Inspection of corporate books and records; right to inspection

1985 By statute, a proper purpose to inspect books and records is one reasonably related to the requester's interest as a stockholder. DEL. CODE ANN. tit. 8, § 220.—*Tactron, Inc. v. KDI Corp.*, No. 7884, 10:660.

1985 Inspection of records which may determine value of stock is limited to those records which are "essential and sufficient."—*Id.*

1985 Inspection of a limited category of documents within a relatively short time frame does not constitute an undue intrusion on corporate management.—*Id.*

1984 It is settled law in Delaware that valuation of one's shares is a proper purpose for the inspection of corporate books and records.—*Radwick Pty., Ltd. v. Medical, Inc.*, No. 7610, 10:290.

1984 Once a proper purpose for seeking inspection of corporate books and records has been established, any secondary purpose of ulterior motive of the stockholder becomes irrelevant.—*Id.*

1984 Valuation of one's shares is a

proper purpose for inspection of corporate books and records notwithstanding whether there was a secondary purpose on the part of the stockholder not reasonably related to its interest as a stockholder. DEL. CODE ANN. tit. 8, § 220.—*Id.*

1984 Where the purpose for seeking inspection of corporate books and records is to value the stock of a privately held corporation, only those records which are essential and sufficient to perform the valuation must be provided. DEL. CODE ANN. tit. 8, § 220.—*Id.*

1984 A stockholder may not use DEL. CODE ANN. tit. 8, § 220 as a means to invade the corporate board room and a shareholder's rights to inspect corporate books and records may be limited where production of certain documents would be adverse to the interests of the corporation. DEL. CODE ANN. tit. 8, § 220—*Id.*

1984 The establishment of a shareholder's right to inspection of corporate books and records under statute depends upon the propriety of the shareholder's stated purpose. DEL. CODE ANN. tit. 8, § 220(b)—*Safecard Services, Inc. v. Credit Card Service Corp.*, No. 6426, 10:298.

1984 To satisfy the burden in a books and records inspection situation, the shareholder must demonstrate that this purpose is reasonably related to his interest as a stockholder.—*Id.*

1984 The shareholder's purpose in seeking inspection must not be adverse to the interests of the corporation.—*Id.*

1984 The court's task is to determine whether the alleged purpose of the shareholder's request is its genuine purpose, and, if so, whether that stated purpose is proper. Having found a proper purpose, any secondary purposes or ulterior motives of the shareholder become irrelevant and may not be the basis for denying the shareholder's inspection rights.—*Id.*

1984 The corporation may seek protection from abuse by the shareholder of its inspection right.—*Id.*

1984 Secondary purposes and ulterior motives can serve as a basis for circumscribing the exercises of the shareholder's otherwise valid right to inspection. DEL. CODE ANN. tit. 8, § 220(c)—*Id.*

1984 If the court determines that the corporation's legitimate interests are threatened by the production of books and records, it may restrict the inspection to protect those legitimate interests.—*Id.*

1984 Although inspection rights may be denied where the shareholder's purpose in obtaining the information is to file harassing and vexatious litigation, generally, the right of inspection exists separate and apart from other pending litigation filed by the shareholder against the corporation.—*Id.*

1984 Stockholders purposes to investigate possible waste and mismanagement and to value its shares of stock are not adverse to a corporation's best interests.—*Id.*

1984 In a mandamus action, the court is afforded a wide range of discretion to grant or withhold relief. This option is not available in a books and records inspection case. DEL. CODE ANN. tit. 8, § 220—*Id.*

1984 The determination of inspection rights are made upon the propriety of the shareholder's purpose and turn on the facts of the particular case.—*Id.*

1984 Communicating with other shareholders about any unspecified issue is not a proper purpose to require disclosure of a stocklist where the stated purpose in the letter of demand was of a vague and indefinite nature. DEL. CODE ANN. tit. 8, § 220 (1983).—*Shamrock Associates v. Dorsey Corp.*, No. 7678, 9:810.

1983 If a stockholder demands the right to inspect books and records, he has the burden of proving a proper purpose which is reasonably related to his interests as a stockholder. DEL. CODE ANN. tit. 8, § 220(b).—*Victory Group, Ltd. v. Cindy's, Inc.*, No. 7042, 8:424.

1983 Once a proper purpose has been

established, a secondary purpose or ulterior motive of the stockholder becomes irrelevant.—*Id.*

1983 While the court can discount a secondary purpose, the proper purpose must not be inimical to the best interests of the corporation.—*Id.*

1983 The investigation of improper transactions has been held to be a proper purpose for allowing a shareholder the right to inspect corporate books and records.—*Id.*

1983 The investigation of what has been described as the wasting of corporate assets constitutes a proper purpose for the inspection of corporate books and records.—*Id.*

1983 In determining the scope of an inspection of the corporate books and records, any evidence which tends to prove or which might lead to evidence tending to prove the established proper purpose should be included within the parameters of that order.—*Id.*

1983 Where information sought by an inspection of the corporate books and records is already public information, such inspection should not be denied when the public disclosures provide only a superficial treatment of the substantive claims advanced for the inspection and such inquiry would not subvert the best interests of the corporation.—*Id.*

1981 Once a proper primary purpose has been demonstrated, the existence of a secondary purpose of a questionable nature becomes irrelevant.—*Carroll v. CM&M Group, Inc.*, No. 6351, 7:181.

1981 Every case in which a shareholder requests an inspection of corporate books and records rests on its own facts.—*Id.*

1981 The standard established in determining what records are essential for the purpose of evaluating stock is that which is sufficient and essential to furnish the information needed in order to place a value on the stock.—*Id.*

1981 Establishing a proper purpose does not, *ipso facto*, entitle a plaintiff shareholder to examine every book, paper, and record which a corporation possesses in an effort to value his stock.—*Id.*

1981 A stockholder may not enforce his right to inspect corporate books where he already has the information to which he is reasonably entitled.—*Id.*

1981 The fact that a stockholder does not have full knowledge of a corporate plan does not negate his right to communicate with other stockholders to oppose that plan.—*Goldman v. Aegis Corp.*, No. 6396, 6:359.

1981 Where a demand for a list of stockholders is stated to be for the purpose of communicating with such stockholders "concerning the affairs of the corporation," such a demand is insufficient but that it may be fleshed out by testimony at trial.—*Jacobs v. Pabst Brewing Co.*, No. 6605, 7:321.

1981 As long as a proper purpose is proven for the request of information pursuant to DEL. CODE ANN. tit. 8, § 220, it is irrelevant that an ulterior motive may exist as well.—*Mills v. Fruit Auction Sales Co.*, No. 6468, 7:209.

1980 A proper purpose for inspection of a corporation stock list, ledger, and corporate books and records is investigation of possible mismanagement.—*Agency Rent-A-Car, Inc. v. Gateway Industries, Inc.*, No. 6109, 6:322.

1978 In an action seeking a current list of stockholders, a stockholder would be at a severe disadvantage in communicating with other stockholders in connection with the annual stockholders' meeting and in connection with the tender offer, unless the management of the corporation supplies the stockholder with supplemental transfer sheets.—*Danco, Inc. v. Contran Corp.*, No. 5638, 4:589.

1978 The Delaware statute concerning stockholders' right of inspection should be literally construed by the court, not hypertechnically, to protect stockholders who are often innocent pawns in tender offer and control bat-

tles. DEL. CODE ANN. tit. 8, § 220.—*Id.*

1978 In an action by plaintiff seeking a current list of stockholders of defendant corporation, it would be an intolerable burden which would violate the basic concept of equity to require the plaintiff to daily file new demands for an updated list and then have to wait five days before filing a new action to obtain each updated list. DEL. CODE ANN. tit. 8, § 220.—*Id.*

1978 The only interpretation of the Delaware statute concerning stockholders' right of inspection which is fair to the stockholders is that the corporation is obligated to continue to make available to the stockholders all current stockholder lists (including supplemental transfer sheets) which come into its possession prior to the stockholders' meeting and during the time the tender offer is viable. DEL. CODE ANN. tit. 8, § 220.—*Id.*

1977 That the corporate defendant has agreed to mail any materials of the beneficial owner to its shareholders is of no significance, since a stockholder is not limited to communicating with other stockholders through management, but has "a right to go to stockholders directly without procedural impediment if he desires to do so."—*Bear, Stearns & Co., v. Pabst Brewing Co.*, No. 5456, 3:596.

1977 The purpose of inspection must be a proper one and not adverse to the interests of the corporation.—*Catalano v. T.W.A.*, No. 5352, 3:589.

1977 It is not necessary for the stockholder in order to obtain inspection of the books and records of the corporation to show that the directors or officers improperly denied him access to them.—*Id.*

1977 The mere refusal of a corporation to permit inspection is adequate grounds to award a stockholder the right to inspect if the stockholder shows a proper purpose.—*Id.*

1977 Inspection of corporate records can only occur when the reason sought is found in good faith and for a specific purpose.—*Id.*

1977 A purely individual purpose in no way germane to the relationship to the corporation is not a proper purpose within the meaning of the statute.—*Id.*

1977 The valuation of stock to enable a stockholder to sell his shares or to meet requirements of valuation imposed upon him by law is a proper purpose within the meaning of DEL. CODE ANN. tit. 8, § 220.—*Neely v. Oklahoma Publishing Company*, No. 5293, 3:139.

1976 The statute makes it clear that the right of a stockholder to inspect the stock list and books and records of his corporation is measured by the propriety of his purpose, and the test for a "proper purpose" is that it be "reasonably related to such person's interest as a stockholder." DEL. CODE ANN. tit. 8, § 220(b)—*Skoglund v. Ormand Industries, Inc.*, No. 5144, 2:359.

1976 Even though a purpose may be proper in the sense that it is reasonably related to the person's interest as a stockholder, it must also not be adverse to the interests of the corporation, and to this extent a stockholders right of inspection is a qualified right depending upon the facts of the particular case.—*Id.*

1976 In the area of inspection rights by corporate stockholders, there often occurs a situation that is not black and white and that does not fit neatly into the legal mold developed in a less complex era.—*Id.*

1975 By statute, a proper purpose for inspection of books and records means a purpose reasonably related to such person's interest as a stockholder. DEL. CODE ANN. tit. 8, § 220(b).—*DPF, Inc. v. Interstate Brands Corp.*, No. 4856, 1:458 & 4:228.

1975 Stockholder's motion for judgment on the pleadings on the basis of the purpose stated in his demand for inspection of the corporation's books and records, stated purpose of which was to enable stockholder to value its stockholding in corporation, denied, since it appeared that stockholder

could already have access to all the information it was reasonably and fairly entitled to receive for the purpose stated, and since stockholder was not entitled to engage in a general fishing expedition. DEL. CODE ANN. tit. 8, § 220.—*Id.*

1975 Stockholder's motion for judgment on the pleadings on the basis of the purpose stated in its demand for inspection of the corporation's books and records, stated purpose of which was to enable stockholder to protect the value of its stockholding and to aid stockholder in its action against the corporation, denied, since the court refused to hold as a matter of law that the pendency of litigation elsewhere cannot constitute a defense to a "books and records" petition. DEL. CODE ANN. tit. 8, § 220.—*Id.*

1975 When the question is one of proper purpose, under the statute a proper purpose means "a purpose reasonably related to such person's interest as a stockholder." DEL. CODE ANN. tit. 8, § 220(b).—*DPF, Inc. v. Interstate Brands Corp.*, No. 4856, 1:458 & 4:228.

1975 When plaintiff could already have access to all the information that it is reasonably and fairly entitled to receive for the purpose stated, plaintiff is not entitled to engage in a general fishing expedition.—*Id.*

1975 It is difficult to say, as a matter of law, the pendency of litigation elsewhere cannot constitute a defense to a "books and records" petition.—*Id.*

1975 Statutory requirement of a "proper purpose" for seeking inspection of stock lists and corporate records includes any purpose reasonably related to such person's interest as a stockholder. DEL. CODE ANN. tit. 8, § 220.—*Sack v. Cadence Industries*, No. 4747; *Bay State Smelting Co. v. Cadence Indus.*, No. 4765, 4:223.

1975 The statutory right of inspection exists separate and apart from other litigation involving the corporation, even if brought by the same stockholder, and the existence of such other litigation alone cannot defeat the right to inspect.—*Id.*

1975 The purpose and policy of § 220 does not deny inspection to a corporate stockholder solely because of pending litigation in another state, especially when he has been invited by the court of that jurisdiction, as a stockholder and not as a party, to appear and offer evidence in opposition to a proposed settlement of that litigation if he has reason to object. DEL. CODE ANN. tit. 8, § 220.—*Id.*

1975 A proper purpose for inspection of a corporation's books and records is investigation of improper transactions.—*Id.*

1975 Stockholder may not enforce his right to inspect corporate books where he already has access to the information.—*Id.*

⇐181(2) Inspection of corporate books and records; books and records subject to inspection

1985 Upon proper demand, a party seeking to solicit written consents or proxies is entitled to shareholder breakdowns readily available to the corporation even if the corporation does not request those breakdowns itself.—*Tactron, Inc. v. KDI Corp.*, No. 7885, 10:656.

1985 A party is not entitled to stockholder breakdowns which are merely duplicative of other breakdowns to be furnished by the defendant corporation.—*Id.*

1985 In a proxy contest a demand for all stockholder information available to or readily obtainable by the defendant corporation appears to go beyond the scope of materials needed to prevent the corporation from having an unfair advantage and need not be complied with.—*Id.*

1984 In deciding the extent of the stockholder's rights to inspect corporate books and records, the court should consider both the information previously provided by the company and the certainty of the stockholder's intention to buy or sell the subject

company's stock.—*Radwick Pty., Ltd. v. Medical, Inc.*, No. 7610, 10:290.

1983 Once a proper purpose has been established, a secondary purpose or ulterior motive of the stockholder becomes irrelevant.—*Victory Group Ltd. v. Cindy's, Inc.*, No. 7042, 8:424.

1981 A stockholder who is properly entitled for an inspection of the corporate stock ledger is automatically entitled to obtain the names of all stockholders, including the names of beneficial owners for whom central certificate depository nominees hold legal title.—*Goldman v. Aegis Corp.*, No. 6396, 6:359.

1981 A stockholder who is properly entitled to an inspection of the corporate stock ledger is also entitled to copy down the number of shares each stockholder owns.—*Id.*

1981 To avoid misuse of section 220, inspection of corporate documents is confined to those in possession or control of the corporation, those which reflect on the business, and those given to or authorized by an officer, director, employee, or agent of the corporation in his official capacity.—*Estate of Polin v. Diamond State Poultry Co.*, No. 6374, 6:368.

1980 When stockholder establishes his status as such and seeks production of stock list and corporate books and records for purpose germane to that status, he is entitled to production of list and any secondary purpose of seeking list is irrelevant. DEL. CODE ANN. tit. 8, § 220.—*Agency Rent-A-Car, Inc. v. Gateway Industries, Inc.*, No. 6109, 6:322.

1978 The Delaware statute concerning stockholders' right of inspection should be liberally construed by the court, not hypertechnically, to protect stockholders who are often innocent pawns in tender offer and control battles. DEL. CODE ANN. tit. 8, § 220.—*Danco, Inc. v. Contran Corp.*, No. 5638, 4:589.

1977 The only requirement of the statute is that the corporation provide to the stockholder the stocklist as maintained by the corporation as of either an existing or specified date and there is nothing in the statute to indicate that the existing stocklist should be expanded for the benefit of the stockholder. DEL. CODE ANN. tit. 8, § 220.—*Bear, Stearns & Co. v. Pabst Brewing Co.*, No. 5456, 3:596.

1977 Inspection of corporate records can only occur when the reason sought is found in good faith and for a specific purpose.—*Catalano v. T.W.A.*, No. 5352, 3:589.

1977 If plaintiff establishes a proper purpose to examine the books and records, then all else is irrelevant.—*Id.*

1977 Where inspection of corporate books and records is demanded for the purpose of placing a value on the stock of a privately held corporation, the right extends only to such records which are "essential and sufficient" to enable the stockholder to establish value and stops short of including all books and records of a corporation and its subsidiaries.—*Neely v. Oklahoma Publishing Co.*, No. 5293, 3:139.

1977 Where there is no contention that management has done anything wrong which might be concealed by not disclosing all the information plaintiff demands and plaintiff has already been given sufficient information, the remaining records and information demanded are not essential to her effort to place a value on her stock.—*Id.*

1976 Where the stockholder seeks to inspect the corporation's books and records, other than its stock ledger or list of stockholders, he must first establish to the satisfaction of the court that he seeks the inspection for such a proper purpose.—*Skoglund v. Ormand Industries, Inc.*, No. 5144, 2:359.

1976 Stockholder inspection, if otherwise proper, should be reasonably confined to information concerning the event or circumstances which caused the stockholder to become interested in the first place.—*Id.*

1976 Under Delaware decisional law, a purpose which warrants inspection of books and records is to investigate the likelihood of general corporate mismanagement and improper transactions.—*Id.*

1976 If plaintiffs are otherwise entitled to inspection and examination of the corporate books and records for the purpose of ascertaining the possible existence of corporate mismanagement and waste, then their right should not be limited to those transactions and conditions which had been brought to their attention and which have aroused their suspicions; it should extend to the corporate minutes and financial records in general during the period into which they seek to inquire, especially where the time span is reasonably related to the specific events cited as the basis for the demand, and the right should not be limited by the decision of present management that plaintiffs may inspect some records for this purpose, but not others.—*Id.*

1971 Where several financial and other records have already been furnished plaintiff, and where there is an established market price for defendant's stock, which is traded on a national exchange, then at this juncture plaintiff's examination and copying of defendant's books and records should be confined to the contractual agreements and corporate minutes as well as supporting papers which were directly involved in the acquisition of a controlling stock interest in defendant by another corporation.—*Business Capital Corp. v. Interphoto Corp.*, No. 3613, 2:340.

⊂⟹181(3) Inspection of corporate books and records; persons entitled to inspection

1984 A beneficial owner who is not a stockholder of record is not entitled to an inspection of the stockholder list. DEL. CODE ANN. tit. 8, § 220.—*Devon v. Pantry Pride, Inc.*, Nos. 7843 & 7849, 10:183.

1984 The mere fact that a shareholder is a competitor cannot preclude a right to inspect corporate records, nor does the filing of a lawsuit against the corporation defeat the right of inspection.—*Safecard Services, Inc. v. Credit Card Service Corp.*, No. 6426, 10:298.

1982 A demand for a stockholders list made by the vice-president in charge of finance of a corporate stockholder, on behalf of the corporation, was made in the name of the corporation when the individual signed the demand letter as vice-president with his signature attested by the corporate secretary and the corporate seal affixed.—*Vista Resources, Inc. v. Camelot Industries Corp.*, No. 6744, 7:522.

1978 Though plaintiff had established a purpose germane to its status as stockholder, the fact that its shares of defendant may have been purchased in violation of state law is irrelevant to its right to inspect defendant's stock list.—*Diamond State Life Insurance Co. v. American Finance System, Inc.*, No. 5571, 4:271.

1977 While the relief provided by statute is virtually absolute as to stocklist inspection, case precedents have tended to require strict adherence to the requirements of the statute in the interest of insuring prompt and limited litigation. DEL. CODE ANN. tit. 8, § 220.—*Bear, Stearns & Co. v. Pabst Brewing Co.*, No. 5456, 3:596.

1977 To allow inspection of the stockholder list by the nominee-stockholder is in keeping with other portions of the corporation law which require that where a beneficial owner desires approval of his stock, the demand must be made on his behalf by the nominee holding legal title for him.—*Id.*

1976 If a proper purpose for inspection is established it is no defense of itself that the stockholder may also have another, or secondary purpose which may be improper.—*Skoglund v. Ormand Industries, Inc.*, No. 5144, 2:359.

1976 The fact that a shareholder is a competitor of the corporation does not

of itself defeat the statutory right of inspection.—*Id.*

1976 Stockholders do not proceed in bad faith when they seek inspection to protect their interests in the corporation.—*Id.*

1976 The fact that stockholders may have a secondary purpose for inspection does not, under Delaware precedents, defeat their right to inspection which is otherwise justified.—*Id.*

1975 In an action where a stockholder of record sought to gain inspection of corporate books and records and the stockholder has indicated a proper purpose is to aid the plaintiff in a pending suit in another state, the burden of any misuse would fall on the plaintiff.—*DPF, Inc. v. Interstate Brands Corp.*, No. 4856, 1:458 & 4:228.

1975 The statutory right of inspection exists separate and apart from other litigation involving the corporation, even if brought by the same stockholder, and the existence of such other litigation alone cannot defeat the right to inspect.—*Sack v. Cadence Indus.*, No. 4747; *Bay State Smelting Co. v. Cadence Indus.*, No. 4765, 4:223.

1974 A demand for a list of stockholder names and addresses complies with the statute when such demand is made by a stockholder of record rather than through an agent or attorney, especially where defendant admits in its answer that plaintiff is a stockholder of defendant. DEL. CODE ANN. tit. 8, § 220.—*Tannetics, Inc. v. A.J. Industries, Inc.*, No. 4592, 2:348.

1974 It is settled law in Delaware that inspection of a stock list is proper when it is sought for the purpose of purchasing additional shares of a corporation's stock from other stockholders, a project which entails communication.—*Id.*

1974 Where inspection of a stockholder list is properly demanded, there is no significance to the fact that plaintiff's present intention is not to assert its control in the event its proposed tender offer succeeds.—*Id.*

1974 Where a stockholder makes a proper demand for a stock list, its production may be conditioned on the stockholder first paying to the corporation the reasonable cost of obtaining and furnishing such list. DEL. CODE ANN. tit. 8, § 220(b).—*Id.*

⊂⊃181(5) Inspection of corporate books and records; request for inspection

1984 A proper purpose is stated when stockholders demand a list of stockholders to communicate with them about a forthcoming annual meeting and solicitation of proxies. DEL. CODE ANN. tit. 8, § 220.—*Devon v. Pantry Pride, Inc.*, Nos. 7843 & 7849, 10:183.

1984 Stockholders are entitled to receive any corporate materials necessary to meaningfully communicate with the stockholders list. *Id.*

1984 Where shareholder's request for a stocklist, on its face, lacks a reasonable relationship between shareholder's purpose and interest in communicating with other shareholders, disclosure of the stocklist is not required. DEL. CODE ANN. tit. 8, § 220.—*Shamrock Associates v. Dorsey Corp.*, No. 7678, 9:810.

1980 Purpose required to be stated by stockholder in order to make demand for inspection of corporate books and records is "proper purpose" defined by statute as purpose reasonably related to demander's interest as stockholder. DEL. CODE ANN. tit. 8, § 220.—*Agency Rent-A-Car, Inc. v. Gateway Industries, Inc.*, No. 6109, 6:322.

1980 Although the stockholder has a virtually absolute right to inspect a stock list of his corporation when such a stockholder has stated a proper purpose, such a stockholder is not entitled to inspection where purpose of the demand is premature and contingent upon a finding of mismanagement, waste, or other corporate wrongdoing on part of management.—*Id.*

1977 Demand for stockholder lists by a stockholder of record, for the purpose of communicating with other stockholders in order to solicit offers

from such stockholders to exchange their common stock for debentures of the beneficial owner, is proper and does relate to a sufficiently specific event.—*Bear, Stearns & Co. v. Pabst Brewing Co.*, No. 5456, 3:596.

1976 Where a stockholder seeks inspection of the stock ledger or list of stockholders the burden of proof is placed upon the corporation to establish that such inspection is sought for an improper purpose. DEL. CODE ANN. tit. 8, § 220(c)—*Skoglund v. Ormand Industries, Inc.*, No. 5144, 2:359.

1976 The statute defines a proper purpose for the examination of a corporation's stock ledger and other books and records as one ". . . reasonably related to such person's interest as a stockholder." DEL. CODE ANN. tit. 8, § 220.—*Tannetics, Inc. v. A.J. Industries, Inc.*, No. 4592, 2:348.

1971 When a stockholder seeks to inspect his corporation's books and records, other than its stock ledger or list of stockholders, he shall first establish ". . . that the inspection he seeks is for a purpose." DEL. CODE ANN. tit. 8, § 220.—*Business Capital Corp. v. Interphoto Corp.*, No. 3613, 2:340.

⇐ 181(6) Inspection of corporate books and records; refusal to allow inspection

1981 The stockholder's right of inspection of corporate records exists without regard to the pendency of an action brought by him against the corporation.—*Estate of Polin v. Diamond State Poultry Co.*, No. 6374, 6:368.

1977 If the sole present issue before the court is the proper purpose of the plaintiffs, the "real reason" defendant initially refused to permit plaintiffs the right to inspect the documents is irrelevant.—*Catalano v. T.W.A.*, No. 5352, 3:589.

1976 A stockholder request for a list of stockholders for the purpose of communicating with other holders of the corporation's common stock with respect to the management of the corporation and the conduct of its affairs has been held to be unspecific as to purpose standing alone.—*Skoglund v. Ormand Industries, Inc.*, No. 5144, 2:359.

1976 It has been held that when an unspecific demand unrelated to an imminent stockholders' meeting or a tender offer or the like which will affect plaintiff's interest as a stockholder is made, such an unspecific demand fails to meet the strict requirement of the statute.—*Id.*

1975 Affirmative defenses alleging unclean hands do not constitute valid defenses to a books and records inspection request pursuant to DEL. CODE ANN. tit. 8, § 220 by the record holder of over thirty percent of the defendant's stock.—*DPF, Inc. v. Interstate Brands Corp.*, No. 4856, 1:458 & 4:228.

1975 Stock list cases are not always valid precedent for books and records cases. The considerations may be quite different.—*Id.*

1975 When plaintiff could already have access to all the information that it is reasonably and fairly entitled to receive for the purpose stated, plaintiff is not entitled to engage in a general fishing expedition.—*Id.*

1975 Inspection should be refused if it would interfere with the course of litigation in another court.—*Sack v. Cadence Indus.*, No. 4747; *Bay State Smelting Co. v. Cadence Indus.*, No. 4765, 4:223.

1974 Inspection of stock lists will not be allowed where a stockholder seeks the list for a non-germane purpose, such as commercializing such list.—*Tannetics, Inc. v. A.J. Industries, Inc.*, No. 4592, 2:348.

1971 A stockholder should not be allowed to embark on a general fishing expedition under the guise of a demand for books and records, particularly where a wholesale production of corporate documents might disclose confidential information in which a stockholder has no direct interest and which could be damaging to the corporation in the hands of a competitor.—*Business Capital Corp. v. Interphoto Corp.*, No. 3613, 2:340.

⊂⊃181(7) Inspection of corporate books and records; furnishing stockholder with statement of corporate affairs

1975 Where transactions about which complaint is made are described in the prospectus, failure to label the transactions as fraudulent, illegal, or unfair does not make the representations in the prospectus false and misleading.—*Farland v. Wills*, No. 4888; *Bank of America v. GAC Properties, Inc.*, No. 4914, 1:467.

⊂⊃181(8) Inspection of corporate books and records; enforcement of right of inspection by courts

1984 A stockholder seeking books and records of a corporation has the burden of establishing that the demand was made in the form and manner required and that the inspection is sought for a proper purpose reasonably related to the stockholder's interest as stockholder. DEL. CODE ANN. tit. 8, § 220—*Radwick Pty., Ltd. v. Medical, Inc.*, No. 7610, 10:290.

1984 With respect to a demand for a stockholder list, the burden is on the resisting corporation to establish that the inspection is sought for an improper purpose. DEL. CODE ANN. tit. 8, § 220.—*Id.*

1984 Where an Australian holding company of defendant corporation's stock sought to inspect documents relating to a transaction being negotiated by the defendant in Australia, the potential benefit to the plaintiff in performing a stock valuation is outweighed by the potential harm to the defendant of untimely disclosure of confidential information about the pending transaction and the defendant is not required to produce those documents. DEL. CODE ANN. tit. 8, § 220.—*Id.*

1984 Unlike a stock list request which places the burden upon the corporation to demonstrate an improper purpose, the burden in a books and records situation rests upon the shareholder to show that the purpose of the inspection is proper. DEL. CODE ANN. tit. 8, § 220(c).—*Safecard Services, Inc. v. Credit Card Service Corp.*, No. 6426, 10:298.

1983 If a stockholder demands the right to inspect books and records, he has the burden of proving a proper purpose which is reasonably related to his interests as a stockholder. DEL. CODE ANN. tit. 8, § 220(b).—*Victory Group, Ltd. v. Cindy's, Inc.*, No. 7042, 8:424.

1981 The burden of proving a proper purpose in a case which seeks books and records other than a stock list rests on a plaintiff stockholder, and such purpose is one reasonable related to such person's interest as a stockholder.—*Carroll v. CM&M Group, Inc.*, No. 6351, 7:181.

1981 Where a stockholder has made a proper demand for inspection of a corporation's stock ledger, the burden of proving that the inspection is sought for an improper purpose is on the corporation.—*Goldman v. Aegis Corp.*, No. 6396, 6:359.

1980 Where certain categories of information sought by plaintiff do not appear to be reasonably related to the proper purpose, such information does not fall within that class of corporate books and records which the plaintiff is entitled to inspect.—*Agency Rent-A-Car, Inc. v. Gateway Industries, Inc.*, No. 6109, 6:322.

1980 Request for order demanding list of stockholders, ledger, "stock list documents," and certain books and records of corporation was not invalid in that no written authorization accompanied the demand expressly authorizing the corporate agent to make such demand since the requirements of DEL. CODE ANN. tit. 8, § 220, were fulfilled when the agent made demand under oath and had actual authority to make said demand. —*Id.*

1978 In an action seeking a current list

of stockholders, a stockholder would be at a severe disadvantage in communicating with other stockholders in connection with the annual stockholders' meeting and in connection with the tender offer, unless the management of the corporation supplies the stockholder with supplemental transfer sheets.—*Danco, Inc. v. Contran Corp.*, No. 5638, 4:589.

1978 When a stockholder seeks an up-to-date stockholder list in connection with a tender offer and with the annual stockholders' meeting, the corporation has the burden of showing that it has supplied accurate and legible stockholder lists with supplemental transfer sheets. DEL. CODE ANN. tit. 8, § 220.—*Id.*

1978 In an action by plaintiff seeking a current list of stockholders of defendant corporation, it would be an intolerable burden which would violate the basic concept of equity to require the plaintiff to daily file new demands for an updated list and then have to wait five days before filing a new action to obtain each updated list. DEL. CODE ANN. tit. 8, § 220.—*Id.*

1978 The only interpretation of the Delaware statute concerning stockholders' right of inspection which is fair to the stockholders is that the corporation is obligated to continue to make available to the stockholders all current stockholder lists (including supplemental transfer sheets) which come into its possession prior to the stockholders' meeting and during the time the tender offer is viable. DEL. CODE ANN. tit. 8, § 220.—*Id.*

1978 Strict adherence to the statutory requirements of demand for inspection is necessary prior to the court's adjudication. DEL. CODE ANN. tit. 8, § 220(b).—*Gay v. Gordon International Corp.*, No. 5541, 4:264.

1978 In an action where the directors of defendant corporation were less than cooperative in permitting plaintiffs, stockholders, to inspect the books and records of defendant corporation, but where plaintiffs eventually obtained inspection through one state court, plaintiffs cannot now complain in a court of another state that the directors have breached a fiduciary duty to plaintiffs in denying them the right to inspect the books and records.—*Sarabyn v. Jessco, Inc.*, No. 607, 4:610.

1977 The Court of Chancery, after hearing, may summarily order a corporation to make available for inspection an "existing list of stockholders," or, alternatively, it may order that the corporation furnish "a list of its stockholders as of a specific date." DEL. CODE ANN. tit. 8, § 220(c).—*Bear, Stearns & Co. v. Pabst Brewing Co.*, No. 5456, 3:596.

1977 The burden of proving that a proper purpose exists as to books and records is on the stockholder, not on the corporation.—*Catalano v. T.W.A.*, No. 5352, 3:589.

1977 As to all books and records, except the stock ledger, the burden is upon the corporation to refute a proper purpose once it has been shown *prima facie* by the stockholder.—*Id.*

1977 Where requested depositions of officers and directors did not appear likely to lead to any evidence relevant to the narrow issue of whether plaintiffs had a proper purpose to inspect corporate records, defendant's Motion for a Protective Order will be granted.—*Id.*

1977 In the case of the stock ledger, the burden is upon the corporation to show the stockholder's improper purpose.—*Id.*

1976 Where it is conceded by the pleadings in a § 220 proceeding that the plaintiff was a stockholder at the time of the events as to which inspection was sought, an affirmative defense based on the clean hands doctrine is immaterial and subject to a motion to strike.—*Skoglund v. Ormand Industries, Inc.*, No. 5144, 2:359.

1975 The burden in a books and records case is on the stockholder to establish that the inspection he seeks is for a proper purpose. DEL. CODE ANN. tit. 8, § 220(c).—*DPF, Inc. v. Interstate Brands Corp.*, No. 4856, 1:458 & 4:228.

1975 Affirmative defenses alleging unclean hands due to alleged illegal and inequitable scheme to gain absolute control of the corporation, acquisition of stock in violation of the Securities Act of 1934, acquisition of the stock in violation of the Investment Act of 1940, and acquisition of stock through a fruadulent tender offer were immaterial and insufficient as a matter of law and stricken insofar as the stockholder's § 220 claim was concerned since it was conceded that plaintiff was a stockholder of record and had owned shares prior to the disputes surrounding tender offer share acquisitions, and the victims of any fraud were not before the court with complaint. DEL. CODE ANN. tit. 8, § 220.—*DPF, Inc. v. Interstate Brands Corp.*, No. 4856, 1:458 & 4:228.

1975 The burden, in a books and records case, is on the stockholder to establish that the inspection he seeks is for a proper purpose. DEL. CODE ANN. tit. 8, § 220(c).—*Id.*

1971 The Supreme Court of Delaware has held that where a plaintiff states a sufficiently specific purpose for desiring to examine books and records having to do with allegedly improper negotiations and transactions between the defendant corporation and two of its directors who were specifically named, that such examination would be allowed.—*Business Capital Corp. v. Interphoto Corp.*, No. 3613, 2:340.

⊂182 Corporate property, funds, and securities

1982 A presumption exists that corporate directors form their business judgments in good faith.—*Smith v. Pritzker*, No. 6342, 8:406.

⊂182.1(1) In general; title and rights in general

1978 Where the preferred stockholders have no preference as to specific earnings or assets of a corporation, a contention that the distribution by the corporation of a new common stock to the corporation's common stockholders as a dividend would constitute an adverse change in the preferences of the existing preferred stockholders as to the assets of the corporation is not persuasive.—*Wood v. Coastal States Gas Corp.*, No. 5696; *Hook v. Wyatt*, No. 5719, 5:326.

⊂182.3 Majority and minority stockholders in general

1984 The mere potential for minority control does not warrant an inference that such control was used to the detriment of other shareholders.—*Zlotnick v. Newell Cos.*, No. 7246, 9:845.

1979 Once one becomes a majority shareholder, he owes a duty to the minority, regardless of how he came by his majority position.—*Field v. Allyn*, No. 5951, 5:357.

1979 Where directors allowed their stock ownership to fall below fifty percent, they continued as directors and officers of the corporation at the pleasure of the majority stockholders.—*Stellini v. Oratorio*, No. 5780, 5:362.

1978 Those who control corporate machinery owe a fiduciary duty to the minority in the exercise thereof over corporate powers and property, and the use of such power to perpetuate control is a violation of that duty.—*Savin Business Machines Corp. v. Rapifax Corp.*, No. 5331, 4:578.

1978 The majority's act of increasing its representation through the purchase of authorized stock equally available to the minority shareholders does not, of itself, constitute a breach of the fiduciary duty owed the minority as will support a preliminary injunction.—*Id.*

1975 There is no mystic number of shares which in itself can be deemed to constitute corporate control where control is claimed to depend on less than a majority holding of corporate stock.—*Liboff v. Allen*, No. 2669, 2:350.

1975 In order to establish domination and control by a minority stockholder

there must be shown some actual exercise of direction over corporate conduct in such a way as to comport with the wishes or interests of the corporation (or persons) doing the controlling.—*Id.*

1975 A mere potential for minority control when bootstrapped to an end result within the general range of that desired by the party possessed of such potential does not automatically rise to a level of proof of control or domination.—*Id.*

⇐182.4 Sale or transfer of assets

1980 The court, as a condition to granting the stay, may forbid the corporation to dispose of, in any manner, all or a major portion of its assets. The court may also forbid any refinancing, liquidation, or merger agreements without plaintiffs first receiving notice and explanation.—*Grynberg v. Burke*, No. 5198, 6:226.

⇐182.4(1) Sale or transfer of assets; in general

1977 There exists a presumption that the directors of a corporation act with a bona fide regard for the interests of the corporation. Thus a sale of the assets by the directors is assumed to have been secured on terms and conditions which were expedient and for the corporation's best interests.—*Simkins Industries, Inc. v. Fibreboard Corporation*, No. 5369, 3:144.

⇐182.4(2) Sale or transfer of assets; fairness and adequacy of price; nature of consideration

1977 Judicial approval can be given to the acceptance of a lower cash offer for the sale of corporate assets, where the choice involves something more than the simple process of deciding between the flat offers of two sums of money tendered by rival bidders.—*Simkins Industries, Inc. v. Fibreboard Corporation*, No. 5369, 3:144.

1977 In order for the court to overturn the sale of corporate assets under DEL. CODE ANN. tit. 8, § 271, it is necessary to overcome the presumption of honest business judgment on the part of the directors by a showing of a shocking disparity between the price paid and the actual value of the assets in question.—*Id.*

1977 To determine whether or not the sale of remaining assets has been properly authorized, the fairness of the consideration received must be judged for fraud in light of the conditions then existing. DEL. CODE ANN. tit. 8, § 271.—*Williams v. Don Yerkes Fine Cars, Inc.*, No. 4777, 4:552.

⇐182.4(3) Sale or transfer of assets; requisites of assent

1977 Upon such terms and conditions as the directors deem expedient, a corporation may sell or lease all, or substantially all, of its assets provided it is authorized by a majority of the outstanding stock of the corporation entitled to vote thereon, at a meeting called upon at least 20 days notice. DEL. CODE ANN. tit. 8, § 271.—*Kramedos v. Kramedos*, No. 518, 3:149.

1963 Where directors, though evenly divided as to which offer of purchase is the best, do recommend a sale of assets and approval of one of the other of the two proposals, the stockholders should be the only body to break the deadlock, it being impossible for an evenly divided board to recommend the one or the other. DEL. CODE ANN. tit. 8, § 271.—*Bowling v. Bonneville, Ltd.*, No. 1688, 2:162.

⇐182.4(5) Sale or transfer of assets; payment of value of stock

1984 Failure to negotiate at arms-length does not *ipso facto* indicate an unfair price for tender offer of shares of stock, but is merely one factor to be considered in determining the fairness of the offer.—*Joseph v. Shell Oil Co.*, No. 7450, 9:191.

⇐182.4(6) Sale or transfer of assets; proceeding for appraisal

1984 The purpose of utilizing a master or an appraiser is to assist the court

in expediting its business.—*Charlip v. Lear Siegler, Inc.*, No. 5178, 10:168.

1984 An appraiser's determination of a price/earnings ratio to be used in valuing stock should not be disturbed if there is a basis in the record.—*Id.*

1982 The appraisal statute expressly provides that the appraisal claim is terminated by a withdrawal of the demand for appraisal and acceptance of the merger consideration. DEL. CODE ANN. tit. 8, § 262(i).—*Kahn v. Household Acquisition Corp.*, No. 6293, 7:324.

1982 In the court's consideration of the asset value factor of dissenting shareholder's stock in an action for appraisal of shares, because receivables and cash are liquid or hard assets, the net value factor must be given a greater weight than if the asset value consists only of difficult to liquidate real estate.—*Steinhart v. Southwest Realty & Development Co.*, No. 583, 7:378.

1981 In appraising shares, the nature of the assets and their liquidity are not to be considered in arriving at asset value but are to be considered only at the weighting phase of the stock appraisal process.—*Steinart v. Southwest Realty & Development Co.*, No. 583, 7:365.

1981 Delaware law firmly establishes that market value, asset value, and earnings value all must be considered where ascertaining the intrinsic or true value of a dissenter's shares.—*Id.*

1981 In an action for appraisal of shares, neither the market value, asset value, nor earnings value factors may be considered the exclusive or sole measure.—*Id.*

1981 In appraising stock of minority shareholders pursuant to a merger where the surviving corporation is expected to liquidate, liquidation is but one factor to consider in weighting asset value since a proper valuation requires consideration of all circumstances peculiar to the subject matter.—*Id.*

⊂⊃186 Dealings with corporations

1985 In dealings between parent and its subsidiary in a situation in which the parent has controlled the transaction in issue and has fixed its terms, a test of whether or not such transaction was intrinsically fair to the subsidiary is normally applied.—*Trans World Airlines, Inc. v. Summa Corp.*, No. 1607, 10:936.

1977 Stockholders may act as agents for their corporation.—*Thomas v. Kempner*, Nos. 4138 & 4174, 5:131.

⊂⊃187 Dealings between members of same corporation

1985 The business judgment rule will not preclude review of conduct alleged to be void under the Delaware General Corporation Law or foreclose inquiry into the board's fiduciary duty to fairly disclose to shareholders all facts germane to the transaction involving the sale or retention of their shares, whether in full or in part.—*Edelman v. Phillips Petroleum Co.*, No. 7899, 10:835.

1985 The standard which governs proxy information is that of complete candor and requires corporate directors to disclose to their shareholders all facts germane to the transaction at hand.—*Repairman's Service Corp. v. Natl. Intergroup, Inc.*, No. 7811, 10:902.

1985 The scope of disclosure in the context of a tender offer is all information such as a reasonable shareholder would consider important in deciding whether to sell or retain stock.—*Id.*

1985 With respect to a merger in which a shareholder would exchange his investment for one in a different entity, full disclosure would encompass all information that a reasonable shareholder would consider important in deciding whether to alter his investment at the stated exchange ratio.—*Id.*

1985 Where plaintiff's complaint alleges misrepresentation and concealment in proxy material, it is the limited duty of the court to assure that all material facts are disclosed in

accordance with the directors' fiduciary obligation.—*Id.*

1985 Where plaintiff's complaint alleges misrepresentation and concealment in proxy material, the defendant's failure to disclose its primary reliance on market value in determining the exchange ratio is not a material nondisclosure.—*Id.*

1985 Where plaintiff's complaint alleges misrepresentation and concealment in proxy material, generally, soft information, such as projections and estimates as to value, need not be disclosed due to their lack of reliability.—*Id.*

1985 Where arm's-length negotiation has resulted in an agreement which fully expresses the terms essential to an understanding by shareholders of the impact of the merger, it is not necessary to describe, in proxy materials, all the bends and turns in the road which led to that result.—*Id.*

1985 In testing the sufficiency of proxy claims, the settled standard is whether there has been full and complete disclosure of all facts which a reasonable stockholder would consider important in deciding how to vote.—*Weingarden v. Meenan Oil Co.*, Nos. 7291 & 7310, 10:666.

1985 Corporate officials are not required to engage in "self-flagellation" or speculate as to alleged improper motives.—*Id.*

1985 Corporate officials are not required to confess wrongdoing.—*Id.*

1984 Where proxy statement sent by corporation to its stockholders prior to the holding of its annual meeting contained statements which were no longer accurate, and where proxy statement inadvertently stated Delaware law in a way likely to confuse or mislead the stockholders, the statement failed to meet the high standard of full and complete disclosure required by Delaware law.—*Cavalcade Oil Corp. v. Texas American Energy Corp.*, No. 7605, 9:417.

1984 Although the fiduciary duty of a majority shareholder in making a tender offer is limited to full disclosure, there is an exception when the maker of the tender offer, owing the fiduciary duty, structures the offer in such a way as to result in an unfair price being offered and the disclosures are unlikely to call the unwary shareholders attention to the unfairness.—*Joseph v. Shell Oil Co.*, No. 7450, 9:191.

1984 Majority shareholders have a duty to exercise complete candor when approaching minority shareholders with a tender offer. Therefore, failure to disclose that an appraiser was not given access to data necessary to completely evaluate the value of stock and failure to fully disclose recent discoveries, regardless of defendants' claim that they were too recent, are factors in violation of the full disclosure requirements of Delaware law.—*Id.*

1984 Majority shareholders have a duty to exercise complete candor in approaching minority shareholders for a tender offer of their shares and have a duty to make a full disclosure of all the facts and circumstances surrounding the offer. Although no one factor standing alone would constitute a breach of a majority shareholder's duty, all factors considered together in light of the surrounding circumstances can make it clear that the tender offeror has not met his duty of disclosure under Delaware law.—*Id.*

1984 Majority stockholder, in making tender offer to acquire minority interest in corporation, was not required to disclose previous appraisals of real estate higher than ascribed value in offering circular where prior appraisals were estimated liquidation rather than going concern values, where independent investment advisor considered and rejected prior appraisals and where prior appraisals were reflected in corporation's financial statements.—*Lewis v. Charan Industries, Inc.*, No. 7738, 10:233.

1984 Majority stockholder, in making

tender offer to acquire minority interest in corporation, was not required to disclose value of tax loss carry forward where such value would depend upon corporation's future performance.—*Id.*

1984 Majority stockholder, in making tender offer to acquire minority interest in corporation, was not required to disclose value of tax loss carry forward where offering circular stated that corporation did not anticipate having to pay income taxes over years included in income projection to the extent it would be able to utilize tax loss carry forward.—*Id.*

1984 Majority stockholder, in making tender offer to acquire minority interest in corporation, did not have to disclose value of tax loss carry forward where corporation's Schedule 140-9, mailed to stockholders, stated amount and expiration period of tax loss carry forward and amount of yearly income taxes corporation would be required to pay in absence of tax loss carry forward.—*Id.*

1984 Majority stockholder, in making tender offer to acquire minority interest in corporation, was not required to disclose value of a tax loss carry forward where both independent investment advisor and committee of outside directors considered impact of tax loss carry forward in evaluating fairness of offered price.—*Id.*

1984 Majority stockholder, in making tender offer to acquire minority interest in corporation, was not required to disclose separate tender offer where separate offer was aimed at acquiring majority interest and majority stockholder had declined to sell.—*Id.*

1984 Majority stockholder, in making tender offer to acquire minority interest in corporation, was not required to withdraw offer in light of separate offer or match price of separate offer where original price offered was not unfair.—*Id.*

1984 Unless minority shareholders are permitted a limited discovery to inquire as to when the agreement between the majority shareholder and the corporation was consummated, there is no practical way that they can learn whether the statement made in the proxy statement was a full disclosure as required under Delaware law.—*O'Malley v. Tele-Communications, Inc.*, Nos. 7273, 7283 & 7284, 9:797.

1984 The standard of intrinsic fairness will be applied only when the fiduciary duty is accompanied by self-dealing.—*Reading Co. v. Trailer Train Co.*, No. 7422, 9:223.

1984 In judging the adequacy of information disclosed in defendant corporation's proxy statement seeking shareholder approval of stock repurchase, the proxy claims must be measured against standard requiring disclosure of all germane facts; that is, all facts which a reasonable stockholder would consider important in deciding how to vote on the transaction.—*Seibert v. Harper & Row Publishers, Inc.*, No. 6639, 10:645.

1984 Where directors, in the issuance of proxy materials, have in the determination of the court made a full and complete disclosure, with complete candor, of all material information which is needed by a shareholder to make an informed decision, plaintiff's challenge to the adequacy of the disclosure must fail.—*Thompson v. Enstar Corp.*, Nos. 7641 & 7643, 9:822; *Huffington v. Enstar Corp.*, No. 7543, 9:185.

1984 When omissions in a proxy statement are alleged in a complaint, the court must carefully review the proxy materials to determine whether there is a reasonable probability that the shareholders were not given all the germane facts.—*Wilen v. Pollution Control Industries, Inc.*, No. 7254, 10:357.

1978 Stockholders are entitled to be treated fairly and with candor by the management of the corporation.—*Danco, Inc. v. Contran Corp.*, No. 5638, 4:589.

1978 There are unquestionably fiduciary duties of candor imposed on a parent or majority shareholder tendering for shares in its subsidiary cor-

poration in dealing with the minority shareholders of its subsidiary.—*Servomation Corp. v. City Investing Co.*, No. 5675, 4:599.

⊂189(1) Actions between members and corporation; right of member or stockholder to sue corporation in general

1978 It is within the responsibility of an equity court to scrutinize a corporate act when it is alleged that its purpose violates a fiduciary duty owed to minority stockholders.—*Savin Business Machines Corp. v. Rapifax Corp.*, No. 5331, 4:578.

1975 When plaintiff owned 100 shares prior to the disputes surrounding tender offer share acquisitions and the victims of any federal fraud are not before the court with a complaint, even common law allegations fail.—*DPF, Inc. v. Interstate Brands Corp.*, No. 4856, 4:228.

1975 In a derivative suit, relief is granted on behalf of and inures to the benefit of the corporation.—*Levien v. Sinclair Oil Corp.*, No. 1883, 1:230.

⊂189(2) Actions between members and corporation; grounds of action by members or stockholders against corporation in general

1984 If a corporate board's postponement of the corporation's annual meeting is to be condemned, it may be based on attendant circumstances that make it reasonably probable to assume that management intended to frustrate the vote of dissident stockholders.—*Huffington v. Enstar Corp.*, No. 7543, 9:185.

1982 Where there is an allegation of breach of a fiduciary duty both at the time of a tender offer and a subsequent merger, claims cannot be made on behalf of those shareholders who did not own shares on either the date of the tender offer or the merger.—*Merritt v. Colonial Foods, Inc.*, No. 6078, 7:345.

1979 In an action challenging the fairness of a corporate merger, under Delaware law, it is sufficient to state a cause of action and require a fairness hearing if the plaintiff alleges the defendants have violated their affirmative fiduciary duty by not opposing a merger which had no business purpose and which eliminated the minority at a grossly inadequate price.—*Weinberger v. UOP, Inc.*, No. 5642, 5:166.

1978 It is not collusive litigation seeking an advisory opinion where a shareholder-director brings suit as a shareholder in the state of its domicile to compel the corporation to hold a shareholders' meeting, which it is uncertain how to hold on its own, and where the court appoints an *amicus* in the absence of invited intervention by other shareholders on notice. DEL. CODE ANN. tit. 8, § 211.—*Palmer v. Arden-Mayfair, Inc.*, No. 5549, 4:617.

⊂189(4) Action between members and corporation; wrongful use of power or authority

1975 Where, after a merger, there would be no change in a business but merely an elimination of minority stockholders, use of control to effectuate such merger is not a valid business purpose under § 251. DEL. CODE ANN. tit. 8, §§ 251, 253.—*Pennsylvania Mutual Fund, Inc. v. Todhunter International, Inc.*, No. 4845, 1:229.

⊂189(9) Action between members and corporation; parties

1982 In an action to enjoin the sale of a corporation's pharmaceutical division because it would render future performance of an existing contract with plaintiff impossible, a motion to dismiss the action on the grounds that (1) no service can be obtained on the purchasing corporation, and (2) that such a purchasing corporation is an indispensable party is properly denied

because the buyer is not an indispensable party to the cause of action arising between the parties to the original contract. DEL. CH. CT. R. 19.—*Rhone-Poulenc S.A. v. Morton-Norwich Products, Inc.*, No. 6742, 7:496.

1982 Upon a motion to dismiss an action for a temporary restraining order that seeks to prevent a sale of corporate services to a co-defendant that are already under contract to the plaintiff, a judgment rendered by the court will not prejudice either of the co-defendant parties to the proposed sale since no obligation to perform can arise until the injunctive relief presently requested is denied by the court.—*Id.*

1979 In a class action challenging the fairness of a corporate merger, where the merger agreement was structured so that it could not be approved unless it received the favorable vote of a majority of the 49.5% minority shares, the class sought to be certified should consist only of those former shareholders of the corporation who are not disputed by the majority shareholders as constituting a proper class, namely, those former shareholders of the corporation who voted against the merger and/or have not turned in their stock certificates in exchange for a per share payment, as provided by the merger agreement.—*Weinberger v. UOP, Inc.*, No. 5642, 5:166.

1979 In an action challenging the fairness of a corporate merger under Delaware law, a class action suit is comprised of all minority shareholders of the corporation as of the effective date of the merger which eliminated their equity interests in the corporation, regardless of when or under what circumstances the members of the minority acquired their holdings.—*Id.*

189(10) Actions between members and corporation; receiver

1982 In order to overcome the presumption that directors have acted in good faith and in the best interests of their corporation, one who attacks corporate action taken by the directors of a Delaware corporation must demonstrate that the judgment of the board of directors of such a corporation was not brought to bear with specificity on the challenged transaction, and that the directors acted so far without information that they can be said to have reached an unintelligent and unadvised judgment.—*Smith v. Pritzker*, No. 6342, 8:406.

189(13) Actions between members and corporation; trial judgment, and decree

1984 The court of chancery is loath to intervene in the internal management of a corporation unless and until a plaintiff can make a case that an exercise of corporate governance, otherwise proper, is used as a tool to frustrate the legitimate rights of its stockholders.—*Huffington v. Enstar Corp.*, No. 7543, 9:185.

1984 The court of chancery will not interfere with a corporate board's postponement of the corporation's annual meeting unless a plaintiff satisfies the burden of showing that an exercise of corporate governance, otherwise proper, is used as a tool to frustrate the legitimate rights of its stockholders.—*Id.*

189(14) Actions between members and corporation; costs and attorney's fees

1985 Where a class action or derivative plaintiff's representation is of a contingent nature, the benefit conferred suggests that full compensation for plaintiff's attorneys' fees is justified.—*Citron v. Burns*, No. 7647, 10:830.

1985 In determining an award of attorneys' fees, the fact that plaintiffs' actions removed five percent of voting power from the control of the board of directors constitutes a benefit to the corporation and its common shareholders since it permits shareholders to make decisions without being con-

fronted with the knowledge that management has a five percent head start with regard to any particular proposition.—*Good v. Texaco, Inc.*, No. 7501, 10:854.

1985 In determining an award of attorneys' fees, the fact that plaintiffs' actions removed five percent of voting power from the control of the board of directors enhances the voting power of common stockholders since it means that a 5% voting power which potentially could be used to thwart the wishes of a majority of their number, if in the hands of another, will not come into play at all, at least through the period prescribed by the repurchase agreement.—*Id.*

1985 In approving a request for attorneys' fees which seemed high, the court held it was not excessive when the court considered the magnitude of the case, the obstacles facing the plaintiffs at the outset, the expertise of counsel, the contingent nature of the fee prospects facing them at the outset, the effort put forth, the result achieved, and the favorable comparison to fees normally paid to investment bankers for their participation in such transactions.—*Id.*

⇐ 190 Actions between members of same corporation

1984 In action by stockholders seeking preliminary injunction enjoining majority stockholder's tender offer, plaintiffs failed to establish likelihood of success on breach of fiduciary duty claims where complete disclosure of germane facts enabled minority stockholders to make informed decision whether or not to tender and where adequate relief would be available in event minority stockholders declined to tender.—*Lewis v. Charan Industries, Inc.*, No. 7738, 10:233.

1984 Controlling stock ownership may exist even in the absence of a numerical majority; but in such event, there must be domination by a minority shareholder through actual exercise of direction over corporate conduct.—*Zlotnick v. Newell Cos.*, No. 7246, 9:845.

1975 Stock ownership alone, at least when it amounts to less than a majority, is not sufficient proof of domination and control.—*Liboff v. Allen*, No. 2669, 2:350.

1975 Ownership of 28½ per cent of a public corporation is not sufficient in Delaware, standing alone, to constitute such proof of domination and control as would shift the burden to its owner to establish the fairness of a transaction consummated between such stockholder and the corporation.—*Id.*

191 Necessity

1985 Unless the certificate of incorporation specifically prohibits shareholders from taking action by written consent, a written consent signed by shareholders of record as determined on the record date fixed by the board of directors, which written consent represents at least the minimum number of votes which would be required to take shareholder action if all shareholders were present at a meeting and were voting, is effective to take any action which could otherwise be taken by shareholder vote at an annual or special meeting. DEL. CODE ANN. tit. 8, §§ 228, 213.—*Plaza Securities Co. v. O'Kelley*, No. 7932, 10:891.

1985 Shareholders who did not give their consent in writing must be notified promptly of the corporate action taken. DEL. CODE ANN. tit. 8, § 228—*Id.*

1985 No restriction can be placed upon the right of shareholders to take action by written consent unless it is accomplished in the certificate of incorporation itself. DEL. CODE ANN. tit. 8, § 228—*Id.*

1985 The statute seems to reflect a legislative policy that if you have the votes you can act immediately without first seeking to ascertain how other shareholders might be inclined to vote on the action being taken. DEL. CODE ANN. tit. 8, § 228—*Id.*

1979 The Delaware legislature has provided a method for corporate action without the formality of a shareholders' meeting. DEL. CODE ANN. tit. 8, § 228.—*Stellini v. Oratorio*, No. 5780, 5:362.

⇨192 Statutory provision

1979 The Delaware legislature has provided a method for corporate action without the formality of a shareholders' meeting. DEL. CODE ANN. tit. 8, § 228.—*Stellini v. Oratorio*, No. 5780, 5:362.

1978 It is beyond statutory purpose to seek declaratory relief where no actual controversy exists. DEL. CODE ANN. tit. 8, §§ 225, 227.—*Palmer v. Arden-Mayfair, Inc.*, No. 5549, 4:617.

⇨193 Time and place, and adjournment

1984 Corporate machinery may not be used to accomplish inequitable purposes even if the action taken technically complies with the law.—*American International Rent A Car, Inc. v. Cross*, No. 7583, 9:144.

1984 The court of chancery will not interfere with a corporate board's postponement of the corporation's annual meeting unless a plaintiff satisfies the burden of showing that an exercise of corporate governance, otherwise proper, is used as a tool to frustrate the legitimate rights of its stockholders.—*Huffington v. Enstar Corp.*, No. 7543, 9:185.

1984 If a corporate board's postponement of the corporation's annual meeting is to be condemned, it may be based on attendant circumstances that make it reasonably probable to assume that management intended to frustrate the vote of dissident stockholders.—*Id.*

1982 Injunctive relief is appropriate in order to stop the involvement of a stockholder meeting date, where an attempt has been made to determine a dissident stockholder's ability to wage a proxy contest.—*American Pacific Corp. v. Super Food Services, Inc.*, No. 7020, 8:320.

1982 Actions taken by the management of a corporation which will confuse stockholders and preclude dissenting stockholders from waging a fair proxy contest with an informed electorate will cause irreparable harm to the dissident stockholders; such injury tips the balance of harm in favor of granting an injunction to stay a forthcoming stockholders' meeting.—*Id.*

1982 Management may not take actions which will confuse voting stockholders and consequently obstruct the legitimate efforts of a dissident stockholder to wage a proxy contest. The stockholders' right to a proxy battle cannot be diminished by an uninformed or misguided electorate.—*Id.*

1981 The fact that the financial information needed by management in order to solicit proxies under SEC regulations is unavailable provides no defense to an action to compel a shareholders' meeting. DEL. CODE ANN. tit. 8, § 211.—*Meredith v. Security America Corp.*, No. 6606, 7:341.

1978 Plaintiffs, stockholders, have no standing to bring an action to compel defendant corporation to hold its annual stockholders' meeting within ninety days of the expiration of its fiscal year, when the time requirement provisions of the state statute have not yet been met. DEL. CODE ANN. tit. 8, § 211(c).—*Sarabyn v. Jessco, Inc.*, No. 607, 4:610.

1978 In an action to compel defendant corporation to hold its annual stockholders' meeting within ninety days of the expiration of its fiscal year, plaintiff must show prejudice to them by the fact that the annual meeting has not yet taken place.—*Id.*

⇨194 Calling and notice

1982 Management may not take actions which will confuse voting stockholders and consequently obstruct the legitimate efforts of a dissident stockholder to wage a proxy contest. The stockholders' right to a proxy battle cannot be diminished by an uninformed or misguided electorate.—*American Pacific Corp. v. Super Food Services, Inc.*, No. 7020, 8:320.

1978 It is not collusive litigation seek-

ing an advisory opinion where a shareholder-director brings suit as a shareholder in the state of its domicile to compel the corporation to hold a shareholders' meeting, which it is uncertain how to hold on its own, and where the court appoints an *amicus* in the absence of invited intervention by other shareholders on notice. DEL. CODE ANN. tit. 8, § 211.—*Palmer v. Arden-Mayfair, Inc.*, No. 5549, 4:617.

⇨195 Quorum and votes or shares required to prevail

1982 A majority of the minority voting provision, which silences stockholders who are not actively seeking acquisition of the company, may become an undue burden on the silenced stockholders as it insulates the minority from the unfair pressure of a majority stockholder.—*American Pacific Corp. v. Super Food Services, Inc.*, No. 7020, 8:320.

1982 A corporation is prohibited from altering a certificate of incorporation which allows a numerically smaller number of stockholders to alter a provision requiring a supermajority vote. DEL. CODE ANN. tit. 8, § 242(c)(4).—*Id.*

⇨197 Right to vote in general

1982 It is illegal for a corporation to adopt an amendment to the bylaws without submitting it to the shareholders for their approval.—*American Pacific Corp. v. Super Food Services, Inc.*, No. 7020, 8:320.

1982 It is recognized in this court that a majority stockholder has certain clear rights, the principal one being the right to vote its shares for its own self interest.—*Klein v. Soundesign Corp.*, Nos. 6636 & 6643, 7:332.

1982 A shareholder may exercise wide liberality of judgment in the matter of voting, so long as it violates no duty owed to his fellow stockholders.—*Id.*

⇨198(2) Proxies; right to vote by proxy

1971 As a general rule, the stock list determines who is entitled to vote, but as between a record holder and a proxy holder, the Master may determine that the proxy holder is entitled to vote the shares in dispute.—*Zlotnick v. Academic Systems Management Corp.*, No. 3344, 2:343.

⇨198(3) Proxies; solicitation; proxy statements

1985 The requirement that the proxy statement reflect the existence of litigation attacking a management proposal does not extend to a recital of opinions of persons retained as experts by the opponents of the proposal.—*Edelman v. Phillips Petroleum Co.*, No. 7899, 10:835.

1984 Casual inquiries regarding the possible acquisition of all or part of a corporation need not be disclosed to the shareholders in a subsequent proxy solicitation seeking merger approval.—*Bershad v. Curtiss-Wright Corp.*; *Kulik v. Dorr-Oliver, Inc.*, No. 5827; 5830, 9:156.

1983 The requirement of full disclosure does not mean that a proxy statement must satisfy unreasonable or absolute standards. The test is whether the facts are germane in the sense that they are those which a reasonable shareholder would consider important in deciding whether to vote for or against the terms of the merger that has been presented to him.—*Rosenblatt v. Getty Oil Co.*, No. 5278, 8:366.

1978 In an action where the plaintiffs object to the form of a proxy solicitation relating to a merger, any objection to the substance of the disclosure is without merit in the absence of any showing that the prospectus and proxy statement contained false or misleading information and that the prospectus and proxy statement did not disclose with complete candor the facts necessary for the stockholders to consider the merger offer.—*Sarabyn v. Jessco, Inc.*, No. 607, 4:610.

1963 The fact that the soliciting stockholder is president of the corporation and a director of its board, which is evenly divided as to the propriety of the proposed action, in no way affects the stockholder's right of solicitation,

and authority to solicit is not required.—*Bowling v. Bonneville, Ltd.*, No. 1688; 2:162.

1963 While the particular method of solicitation adopted by an officer, that is, inclusion of his letter with the proxy material, may be an unusual way of approach to other stockholders, it certainly cannot be regarded as forming the basis for a finding that the proxy statement was false and misleading.—*Id.*

1963 There is an area of "permissible puffing" to be expected in proxy solicitations.—*Id.*

1963 If certain financial statements in support of one offer are included in the proxy material, the failure to include comparable statements in support of the other does not necessarily lead to the conclusion that stockholders were or could have been mislead, and whether that result would follow such an omission depends upon the circumstances of the case.—*Id.*

1963 In determining whether certain language in a proxy is subject to misinterpretation, the standard to be applied is whether a person of reasonable intelligence would have been misled or confused.—*Id.*

⊂⊃198(4) Proxies; form and requisites

1978 If a proxy form is overbroad and an attempt is made to use it to vote for matters other than the proposed merger, the court would not hesitate to set the meeting aside.—*Sarabyn v. Jessco, Inc.*, No. 607, 4:610.

1963 A stockholder of a corporation may properly solicit other stockholders to vote in a certain manner on proposed corporate action, and the form of such solicitation may be tete-a-tete or, as here, in letter form.—*Bowling v. Bonneville, Ltd.*, No. 1688, 2:162.

1963 Proxy material need not contain more than one point of view, since the directors who favor a counter proposal have an equal opportunity to present their views to the stockholders, and the fact that opposing points of view had been presented to stockholders on prior occasions is not pertinent.—*Id.*

⊂⊃198(5) Proxies; authority of proxy and effect of representation

1978 If a proxy form is overbroad and an attempt is made to use it to vote for matters other than the proposed merger, the court would not hesitate to set the meeting aside.—*Sarabyn v. Jessco, Inc.*, No. 607, 4:610.

1971 Where, pursuant to an agreement, an irrevocable proxy is given as security for a promised performance, that agreement may create a sufficient interest to support the power of the proxy and to make it irrevocable.—*Zlotnick v. Academic Systems Management Corp.*, No. 3344, 2:343.

⊂⊃198(6) Proxies; revocation

1971 A duly executed proxy is irrevocable if it so states, and if it is coupled with an interest sufficient to support an irrevocable power. DEL. CODE ANN. tit. 8, § 212(c)—*Zlotnick v. Academic Systems Management Corp.*, No. 3344, 2:343.

1971 The interest which will support an irrevocable proxy need not be in the stock itself, but may be any property interest in the proxy holder for which the proxy is given as security.—*Id.*

1971 Where, pursuant to an agreement, an irrevocable proxy is given as security for a promised performance, that agreement may create a sufficient interest to support the power of the proxy and to make it irrevocable.—*Id.*

⊂⊃198.1 Voting trusts

1984 The test of whether a lock-up provision should be upheld is whether management acted reasonably.—*Thompson v. Enstar Corp.*, Nos. 7641 & 7643, 9:822; *Huffington v. Enstar Corp.*, No. 7543, 9:185.

1975 The statutory language of the Delaware Voting Trust Statute contemplates generally an association of stockholders. It does not ordinarily apply to an instance where a single

stockholder chooses to vote his stock through the mechanism of a trust where the principle purpose of the trust is not the voting control of a corporation, or to form a secret, uncontrolled combination of the stockholders to the possible detriment of nonparticipating shareholders. DEL. CODE ANN. tit. 8, § 208. *Fixman v. Diversified Industries, Inc.*, No. 4721; 1:171.

⇐ 198.1(2) Voting trusts; validity

1984 Voting trusts are not illegal per se, however, if they are legally entered into in accordance with the statutes, if the purpose is not one the law deems illegal, if they are not wrongful, and if they are in the best interests of the shareholdes, they will be upheld.—*Thompson v. Enstar Corp.*, Nos. 7641 & 7643, 9:822; *Huffington v. Enstar Corp.*, No. 7543, 9:185.

1980 An interlocutory appeal is authorized where a decision has determined a substantial issue and established legal rights between the parties. The substantial issue is the determination that DEL. CODE ANN. tit. 8, § 218 applies to and governs the validity of the voting trust agreement and the purported amendment to that agreement. DEL. CODE ANN. tit. 8, § 218.—*Grynberg v. Burke*, No. 5198, 6:223.

1975 Where the purpose of an agreement was to vote stock of a corporation through an impartial committee of trustees in the best interests of the corporation, the separation of voting power from ownership is valid under Delaware law.—*Fixman v. Diversified Industries, Inc.*, No. 4721, 1:171.

⇐ 198.1(3) Voting trusts; construction and operation in general

1980 Legal rights have been established by the prior decision that the amendment was ineffective since such decision deprives the corporation of the right to have the voting trust continue.—*Grynberg v. Burke*, No. 5198, 6:223.

1980 The additional element required for an interlocutory appeal is satisfied by the fact that two recent decisions of the court of chancery, dealing with the creation of a voting trust under DEL. CODE tit. 8, § 218, appear to be in conflict as to the legal questions concerning voting trusts. DEL. CODE ANN. tit. 8, § 218.—*Id.*

1975 The failure to promptly deposit or otherwise designate the shares of stock in a trust agreement does not prevent enforcement of the trust.—*Fixman v. Diversified Industries, Inc.*, No. 4721, 1:171.

⇐ 198.1(5) Voting trustees; trustees

1975 When an employment contract is given as part consideration for the creation of a trust affecting the voting power of a shareholder, such consideration is not invalid when the employee was valuable to the company and it was given as part of an agreement which sought to effectuate a valid business purpose.—*Fixman v. Diversified Industries, Inc.*, No. 4721, 1:171.

⇐ 199 Agreementss as to voting

1983 An agreement between two shareholders which can be construed to be a purchase of voting rights should not be considered as illegal per se unless the object or purpose is to defraud or in some way disenfranchise the other stockholders.—*Wincorp Realty Investment Inc., v. Goodtab, Inc.*, No. 7314, 8:636.

⇐ 200 Cumulative voting

1978 The purpose of the right of cumulative voting is to afford to a minority of the voting stock an opportunity to elect one or more directors; however, it does not assure a minority stockholder a representation in any event because this right is purely incident to stock and not to individuals.—*Savin Business Machines Corp. v. Rapifax Corp.*, No. 5331, 4:578.

1978 When corporate stock is divided into voting classes, with each class having a separate right to elect a certain number of directors, the right to vote any given class is dependent upon the combination of a sufficient number of shares to control the vote of that class.—*Id.*

⟹201 Judicial regulation or review of proceedings

1984 That the plan of reorganization had not been confirmed under the Bankruptcy Code and that there could be substantial delay if the shareholder's meeting was postponed until the confirmation process concluded may justify order of a shareholder's meeting.—*NKFW Partners v. Saxon Industries, Inc.*, No. 7468, 9:792.

1984 Defendant corporation does not make out a clear case of abuse where the shareholder's primary reason for compelling shareholder's meeting is to negotiate a more substantial equity distribution and defendant corporation presents no facts demonstrating that plaintiff shareholders are attempting to smash the corporation.—*Id.*

1984 The facts that plaintiff was a shareholder of defendant corporation and that there had been no meetings of shareholders since June of 1981, a period of time far in excess of thirteen months, made out a prima facie case for relief under statute mandating annual meeting of stockholders. DEL. CODE ANN. tit. 8, § 211.—*Id.*

1983 Plaintiff's inability to make a decision as to whether he would later seek the statutory appraisal remedy, because he did not at the time of the merger know precisely what amount he would be paid for his interest in the corporation, was not sufficient threat of irreparable harm to support his motion for a temporary restraining order to stop the merger.—*Carroll v. CM&M Group, Inc.*, No. 7368, 8:565.

1983 Where defendants' motion for summary judgment, if successful, would reduce by two-thirds the members of plaintiff's class, and would also affect the burden of proof at trial on behalf of the remaining members of the class, an order by the court purporting to define the class and directing that notice be sent to all class members before the summary judgment decision has been made would be premature and possibly wasteful of both time and money, and so should be deferred.—*Citron v. E.I. DuPont de Nemours & Co.*, No. 6219, 8:571.

1982 Upon a plaintiff's action to temporarily enjoin the holding of an annual shareholder's meeting, there is reluctance to restrain the entire meeting as opposed to enjoining the consummation of some decision made at the meeting in the event that it receives the necessary votes.—*Nerken v. Solarex Corp.*, No. 6788, 7:490.

1982 In a plaintiff's action to enjoin the holding of an annual shareholder's meeting, the number of shareholders involved and the complexity of the situation may warrant such a restraining order if the judge feels the situation requires such a severe action.—*Id.*

1981 The fact that the financial information needed by management in order to solicit proxies under SEC regulations is unavailable provides no defense to an action to compel a shareholders meeting. DEL. CODE ANN. tit. 8, § 211.—*Meredith v. Security America Corp.*, No. 6606, 7:341.

1978 The court of chancery may issue such orders as may be appropriate, including without limitation, orders designating the time and place, the record date for determination of stockholders entitled to vote, and the form of a meeting of shareholders where none has been held for more than thirteen months. DEL. CODE ANN. tit. 8, § 211(c).—*Palmer v. Arden-Mayfair, Inc.*, No. 5549, 4:617.

1978 The court has the power, ancillary to ordering a shareholders' meeting for the election of directors, to also resolve doubts existing as to the manner of holding the election

and the terms of the office to be voted upon. DEL. CODE ANN. tit. 8, § 211. —*Id.*

1978 In an action where the plaintiffs object to the form of a proxy solicitation relating to a merger, any objection to the substance of the disclosure is without merit in the absence of any showing that the prospectus and proxy statement contained false or misleading information and that the prospectus and proxy statement did not disclose with complete candor the facts necessary for the stockholders to consider the merger offer.—*Sarabyn v. Jessco, Inc.*, No. 607, 4:610.

1978 In an application for a temporary restraining order, the court enjoins stockholder meetings only with great reluctance.—*Id.*

1977 A court will interfere with the holding of a stockholder's meeting only with great reluctance.—*Bell v. Lavino*, No. 5319, 3:572.

1977 An injunctive order should never issue to enjoin an annual meeting of stockholders in the absence of a showing of irreparable harm or fraud.—*Id.*

⇐ 202 Right to sue or defend in general

1985 Approval of a proposed settlement of claims alleging wrongdoing of board members under Delaware state law is in no way intended, on grounds of *res judicata* to bring about termination of claims under federal securities laws.—*Good v. Texaco, Inc.*, No. 7501, 10:854.

1984 Where the facts alleged and relied upon to support a class action claim are the same as those relied upon to support the derivative claim, they clearly indicate a wrong to the corporation and not a wrong to all of the common shareholders individually. Therefore, the cause of action is in the nature of a derivative suit and the class action should be dismissed.—*Good v. Texaco, Inc.*, No. 7501, 9:461.

1984 When injury to corporate stock falls equally upon all stockholders, an individual stockholder may not recover for injuries to his stock alone but must seek recovery derivatively on behalf of the corporation.—*Wilen v. Pollution Control Industries, Inc.*, No. 7254, 10:357.

1982 An application to intervene either as a matter of right or as a matter of discretion under DEL. CH. CT. R. 24 will be granted only if the applicant can show compliance with the requirements of the rule.—*FMC Corp. v. R.P. Scherer Corp.*, No. 6889, 8:337.

1977 In a derivative suit, plaintiffs must allege actual damage to the corporation or actual usurpation of a corporate opportunity by the defendant.—*Citron v. Merritt-Chapman & Scott Corp.*, No. 3130, 4:237.

⇐ 206(1) Refusal of corporation or officers to act; in general

1984 A decision on a demand made after a lawsuit was commenced does not mandate a finding that the refusal was wrongful.—*Lewis v. Hett*, No. 6752, 10:240.

1981 The right of a stockholder to bring a derivative action does not arise until a demand on the corporation to institute such an action has been made, and that the demand was refused, or until he demonstrates that such a demand would be futile.—*Stepak v. Dean*, No. 6315, 6:417.

⇐ 206(2) Refusal of corporation or officers to act; necessity of demanding action by corporation or its officers

1984 The right of a stockholder to bring a derivative action does not come into being until the stockholder has made a demand on the corporation to institute suit and the demand has been refused, unless plaintiff-stockholder has demonstrated through allegations in the complaint that such a demand would be futile. DEL. CH. CT. R. 23.1.—*Lewis v. Daum*, No. 6733, 9:481.

1981 The right of a stockholder to bring a derivative action does not arise until a demand on the corpora-

tion to institute such an action has been made, and that the demand was refused, or until he demonstrates that such a demand would be futile.—*Stepak v. Dean*, No. 6315, 6:417.

⊂⊃206(3) Refusal of corporation or officers to act; sufficiency of demand

1984 A letter to the board of directors which complained that a stock repurchase was not in the best interests of the shareholders or employees and which failed to provide an opportunity for the board of directors to correct any purported wrongs did not constitute a demand under Chancery Court Rule 23.1. DEL. CH. CT. R. 23.1.—*Seibert v. Harper & Row Publishers, Inc.*, No. 6639, 10:645.

1984 A letter to the board of directors which complained that a stock repurchase was not in the best interests of the shareholders or employees and which was sent one month before final agreement and three months before proxy statement was disseminated did not constitute a demand under Chancery Court Rule 23.1 because defendant directors had no notice that counsel's concern about the transaction had not been satisfied by the proxy material provided by defendant corporation. DEL. CH. CT. R. 23.1.—*Id.*

⊂⊃206(4) Refusal of corporation or officers to act; excuse for failure to seek redress through corporation or officers

1985 The claim of waste may satisfy the second prong or business judgment exception in *Aronson v. Lewis*.—*Edelman v. Phillips Petroleum Co.*, No. 7899, 10:835.

1985 In determining demand futility, the court must decide whether, under the particular facts alleged, a reasonably doubt is created that the directors are disinterested and independent and the challenged transaction was otherwise the product of a valid exercise of business judgment.—*Scopas Technology Co. v. Lord*, No. 7559, 10:306.

1985 Under the "demand futility test," facts alleged in the complaint in shareholder derivative actions are examined to determine whether they create a reasonable doubt that: (1) directors are disinterested and independent, and (2) the challenged transaction otherwise was the product of a valid exercise of business judgment. DEL. CH. CT. R. 23.1.—*Sundin v. Fisher*, No. 6918, 10:917.

1985 For purposes of the "demand futility test," plaintiffs in a stockholder derivative suit must demonstrate by particularized allegations that a warehouse sale was so devoid of legitimate corporate purpose as to be a waste of assets. DEL. CH. CT. R. 23.1.—*Id.*

1985 A conclusory allegation of domination and control, without factual support, is insufficient to excuse demand. DEL. CH. CT. R. 23.1.—*Id.*

1985 The demand requirement is a recognition of the fundamental precept that directors manage the business and affairs of the corporation, therefore any excuse for the failure to make demand must be predicated on questions of business judgment. DEL. CH. CT. R. 23.1.—*Id.*

1984 Compliance with the demand requirement of Rule 23.1 is tested against that which the plaintiff has alleged in his complaint and not against factual matter put forth by the defendants by way of explanation or mitigation of the factual allegations of the complaint. DEL. CH. CT. R. 23.1—*Good v. Texaco, Inc.*, No. 7501, 9:461.

1984 Where the transaction under attack is an "interested" director transaction, the business judgment rule is inapplicable and the inquiry of the court is at an end. In such an event, the futility of demand has been established.—*Id.*

1984 In determining demand futility, the court of chancery in the proper exercise of its discretion must decide whether, under the particular facts alleged, a reasonable doubt is created that: (1) the directors are disinterested and independent; and (2) the challenged transaction was otherwise the product of business judgment.—*Id.*

1984 Stockholder's demand upon corporate directors prior to filing a derivative action would be excused as futile where directors are under an influence which sterilizes their discretion such that they cannot be considered proper persons to conduct litigation on behalf of corporation. DEL. CH. CT. R. 23.1.—*Lewis v. Daum*, No. 6733, 9:481.

1984 In order to bring a demand-excused derivative action, stockholders must meet the more difficult burden of the reasonable doubt standard which requires that plaintiff create a reasonable doubt (1) that the directors are disinterested and independent, and (2) that the challenged transaction was otherwise the product of a valid exercise of business judgment.—*Id.*

1984 When only one board member stands to benefit from a stock repurchase, there is a failure to allege particularized facts supporting a breach of fiduciary duty claim which would tend to sterilize the discretion of those approving the transaction.—*Id.*

1984 A mere allegation that a transaction by the directors constituted a wrong to the corporation does support charge of breach of fiduciary duty so as to demonstrate futility of making a demand on the board.—*Id.*

1984 In determining demand futility in a derivative action, the court will not accept as sufficient plaintiff-stockholder's contention that the institution of an action would require the present directors to sue themselves; such acceptance would effectively abrogate Rule 23.1. DEL. CH. CT. R. 23.1.—*Id.*

1984 In determining demand futility, the court should decide whether a reasonable doubt is created that (1) the directors are disinterested and independent, and (2) the challenged transaction was otherwise the product of a valid exercise of business judgment.—*Lewis v. Hett*, No. 6752, 10:240.

1984 The factual allegations stated in the complaint control the court's review in determining the merits of plaintiff's claim.—*Id.*

1984 In reviewing "demand refused" allegations, a reasonable doubt is created that directors are disinterested and independent and the challenged transaction was otherwise the product of a valid exercise of business judgment. DEL. CH. CT. R. 23.1—*Seibert v. Harper & Row Publishers, Inc.*, No. 6639, 10:645.

1984 The fact that directors failed to act in response to a letter which complained that a stock repurchase was not in the best interests of the shareholders or employees and which was sent one month before final agreement and three months before proxy statement was disseminated does not create a reasonable doubt as to directors disinterestedness or independence. DEL. CH. CT. R. 23.1.—*Id.*

1984 An allegation that four of nine directors held management positions and that a fifth director's interest stems from the fact that he is a cousin of a director who heads a subsidiary of defendant corporation did not provide a basis for concluding that a majority of the board was interested by virtue of their executive positions with the company. DEL. CH. CT. R. 23.1—*Id.*

1984 Stockholders claim in derivative action that a majority of the directors participated in and approved the alleged wrongs is not a basis for excusing demand. DEL. CH. CT. R. 23.1—*Id.*

1984 An allegation that the defendant directors were interested because a stock repurchase enabled them to control over thirty percent of the corporation's stock is sufficient to establish a reasonable doubt that they were in-

terested for the purposes of a demand excused allegation.—*Id.*

1982 Where mere approval of the corporate action, absent self-interests or other indication of bias, is the sole basis for establishing the directors' wrongdoing and hence for excusing demand on them, plaintiff's suit should ordinarily be dismissed.—*Stepak v. Dean*, No. 1809, 7:509.

1981 The futility of a stockholder's demand on the corporation to take action is gauged at the time a derivative suit is commenced.—*Stepak v. Dean*, No. 6315, 6:417.

1981 Where plaintiff failed to name a majority of the current directors at the commencement of his derivative action, a showing that a majority of the board was involved in the acts complained of is insufficient to prove a demand to the board of directors, to redress would be futile.—*Id.*

1981 A mere conclusory allegation of board control by a single defendant without factual support is insufficient to show that a demand on the board to take action would be futile.—*Id.*

⊂207 Persons entitled to sue or defend

1984 Generally, to maintain a derivative suit on behalf of a corporation, not only must plaintiffs be shareholders of that corporation at the time of the alleged wrong and at the commencement of the suit, they must remain shareholders throughout the litigation. DEL. CODE ANN. tit. 8, §§ 259, 261, 327 (1953); DEL. CH. CT. R. 23.1.—*Bonime v. Biaggini*, No. 6925; *Mayer v. Biaggini*, No. 6980, 10:610.

1984 Where plaintiffs bring a derivative suit on behalf of a corporation, but lose their status as shareholders of the corporation due to a merger which occurs after the suit is instituted, they also lose their ability to maintain the derivative suit.—*Id.*

1984 Where plaintiffs in a derivative suit on behalf of a corporation lose their status as shareholders in the original corporation because of a merger during the pendency of the suit, two circumstances will preserve their standing to maintain the suit: first, where the plaintiffs allege the merger was merely a device to eliminate the derivative claim and thus reflects an element of fraud; and second, where the merger simply effects a reorganization that does not alter the plaintiffs' ownership in the primary corporation. DEL. CODE ANN. tit. 8, §§ 259, 261, 327 (1953); DEL. CH. CT. R. 23.1.—*Id.*

1984 Where plaintiffs have lost their status as shareholders in a derivative suit, the mere fact that their former interests in the original corporation are now reflected in shares of a holding company is not controlling, as the question of common identity between the old corporation and the new does not turn on whether the surviving corporation is deemed a holding company or an operating company, but on whether the surviving entity is merely the same corporate structure under a new name or a new and different enterprise which has succeded to the property rights of constituent corporations. DEL. CODE ANN. tit. 8, § 327 (1953).—*Id.*

1982 One who held no stock at the time of the mismanagement ought not to be allowed to sue, unless the mismanagement or its effects continue and are injurious to him, or it affects him specially and peculiarly in some other manner.—*Brown v. Automated Marketing Systems, Inc.*, No. 6715, 7:466.

1982 In order to bring any type of derivative action to correct alleged acts of corporate mismanagement, it is necessary that the plaintiff either be a stockholder at the time of the transaction complained of, or that his stock thereafter devolve upon him by operation of law. DEL. CODE ANN. tit. 8, § 327.—*Id.*

1982 The purchaser of corporate stock ought to take things as he found them when he voluntarily acquired an interest. So long as he is not injured in what he got when he purchased, and holds exactly what he got and in the

condition in which he got it, there is no ground for complaint.—*Id.*

1982 Under Delaware law, a plaintiff bringing a derivative suit on behalf of a corporation must be a shareholder of the corporation at the time he commences suit and must maintain that status throughout the course of litigation.—*Lewis v. Anderson*, No. 6505, 8:351.

1982 Where there is a pending derivative claim on behalf of a corporation which is subsequently merged into another corporation, the derivative claim, if valid, is an asset of the merged corporation which by operation of law passes to and becomes an asset of the surviving corporation.—*Id.*

1982 Since the right to a derivative cause of action passes to the surviving corporation by virtue of a merger, the former shareholders of the company that have ceased to exist as a result of the merger cannot maintain a derivative action on behalf of their former corporation.—*Id.*

1982 While section 261 preserves the claims set forth in a derivative action which predates a merger, it does not necessarily lock in the parties who may prosecute those claims following the merger. DEL. CODE ANN. tit. 8, § 261.—*Id.*

1979 Where, by virtue of the terms of a merger, a shareholder of the now defunct corporation is converted into a creditor of the surviving corporation as of the date of the merger becoming effective, the shareholder loses his standing to maintain a derivative action on behalf of the defunct corporation.—*Weinberger v. UOP, Inc.*, No. 5642, 5:158.

⇨207½ Nature and form of remedy

1982 While it is clear that a fiduciary may not make a profit at the expense of those for whom he sues, the stockholders of a corporation are not entitled to any share of profits on a constructive trust theory where a shareholder has filed a derivative and class action suit against the corporation and subsequently negotiated a redemption of his stock in good faith for fair consideration.—*Valhi v. PSA*, No. 5730, 7:516.

⇨208 Jurisdiction and venue

1978 California Superior Court decisions on appeal which interpret California foreign corporation statutes do not divest the Delaware court of power to order an annual meeting of a Delaware corporation upon the application of a shareholder. DEL. CODE ANN. tit. 8, § 211.—*Palmer v. Arden-Mayfair, Inc.*, No. 5549, 4:617.

⇨210 Parties

1979 An employer can not hold a third party liable, when he works with an employee of that employer who breached his fiduciary duty to that employer, when there is no evidence that the third party knew of the breach.—*Science Accessories Corp. v. American Research & Development Corp.*, No. 4324, 5:523.

⇨211 Pleading

1984 Where the facts alleged and relied upon to support a class action claim are the same as those relied upon to support the derivative claim, they clearly indicate a wrong to the corporation and not a wrong to all of the common shareholders individually. Therefore, the cause of action is in the nature of a derivative suit and the class action should be dismissed.—*Good v. Texaco, Inc.*, No. 7501, 9:461.

⇨211(1) Pleading; allegations as to corporate right of action

1977 In a derivative suit, plaintiffs must allege actual damage to the corporation or actual usurpation of a corporate opportunity by the defendant.—*Citron v. Merritt-Chapman & Scott Corp.*, No. 3130, 4:237.

⇨211(2) Pleading; allegations as to interest of or injury to plaintiff or complainant

1982 In order to bring any type of derivative action to correct alleged acts

of corporate mismanagement, it is necessary that the plaintiff either be a stockholder at the time of the transaction complained of, or that his stock thereafter devolve upon him by operation of law. DEL. CODE ANN. tit. 8, § 327.—*Brown v. Automated Marketing Systems, Inc.*, No. 6715, 7:466.

⇐ 211(4) Pleading; sufficiency of allegations as to demand and refusal of corporation or officers to act

1981 A mere conclusory allegation of board control by a single defendant without factual support is insufficient to show that a demand on the board to take action would be futile.—*Stepak v. Dean*, No. 6315, 6:417.

1981 Where plaintiff failed to name a majority of the current directors at the commencement of his derivative action, a showing that a majority of the board was involved in the acts complained of is insufficient to prove a demand to the board of directors to redress would be futile.—*Stepak v. Dean*, No. 6315, 6:417.

⇐ 211(5) Pleading; excuse for failure to allege demand for action by corporation or officers

1984 Where the transaction under attack is an "interested" director transaction, the business judgment rule is inapplicable and the inquiry of the court is at an end. In such an event, the futility of demand has been established.—*Good v. Texaco, Inc.*, No. 7501, 9:461.

1984 When only one board member stands to benefit from a stock repurchase, there is a failure to allege particularized facts supporting a breach of fiduciary duty claim which would tend to sterilize the discretion of those approving the transaction.—*Lewis v. Daum*, No. 6733, 9:481.

1984 When attempting to satisfy the demand futility test, simply naming directors as defendants does not, of itself, demonstrate that demand would have been futile.—*Scopas Technology Co. v. Lord*, No. 7559, 10:306.

⇐ 211(6) Pleading; sufficiency of bill, petition, or complaint

1984 A naked allegation in a complaint that a premium was paid to repurchase shares does not automatically state a wrong without more.—*Lewis v. Daum*, No. 6733, 9:481.

1977 Upon liquidation, a party who agrees to distribution in kind in satisfaction of various claims and later becomes dissatisfied with the agreement, will have no basis for a complaint for an accounting.—*Brown v. Fenimore*, No. 4097, 3:552.

1977 A stockholder's attendance at corporate meetings of whatever type in itself is insufficient to establish an agency relationship.—*Thomas v. Kempner*, Nos. 4138 & 4174, 5:131.

⇐ 212 Evidence

1985 If the board's conduct served to accomplish a shift in the internal structure of the corporation in such a way as to transfer power from the shareholders to management, the board would be required to demonstrate the rational purpose for its conduct, without a shifting in the burden of proof.—*Edelman v. Phillips Petroleum Co.*, No. 7899, 10:835.

1985 Under the intrinsic fairness doctrine, the parent corporation must demonstrate that an independent board would have been no more successful in securing the jet aircraft which the subsidiary proves were necessary and thus avoid the damages. The controlling shareholder must demonstrate that its conduct was not a cause of the losses suffered by minority shareholders.—*Trans World Airlines, Inc. v. Summa Corp.*, No. 1607, 10:936.

1984 Where a Special Litigation Committee, in moving for dismissal of a stockholders derivative suit, files a lengthy and detailed report setting forth numerous findings as well as the

factual basis relied upon in reaching its conclusion, the total production of all documents reviewed and relied upon by the committee in compiling its report is not necessary to the stockholder's right to challenge the good faith of the committee or reasonableness of the basis for its conclusions; particularly when the stockholders have set forth no particulars in their complaint of any specific misconduct by the defendants in support of their general charges of wrongdoing.—*Kaplan v. Wyatt*, No. 6361, 9:205.

1984 A plaintiff seeking limited discovery in order to oppose a motion by a Special Litigation Committee to dismiss a stockholder's derivative suit should have the opportunity to depose the committee members concerning the good faith of its efforts and reasonableness of its conclusions. When the committee files a lengthy and detailed report setting forth its findings and the factual basis for its conclusion, the report itself, together with any knowledge the plaintiff may have supporting the allegations of the complaint, provides a reasonable basis to enable plaintiff to proceed with those depositions.—*Id.*

1979 In a derivative action the burden is on the defendant to come forward and produce evidence relating to the challenged transaction, since the facts are peculiarly in the knowledge of the defendant.—*Schreibner v. Bryan*, No. 4250, 5:381.

1976 Upon the independent stockholder ratification of a proposed transaction of a corporation, the burden of proof shifts to the objectant who must then establish the unfairness of the transaction.—*Parker v. Hofmann*, No. 5172, 3:549.

1974 In a stockholder's derivative action evidence was sufficient to establish that, at the time of the transaction, because of its limited assets defendant corporation was not in a financial position to commit itself to a speculative opportunity.—*Fliegler v. Lawrence*, No. 3647, 1:145.

1974 Where officers undertake to sell an opportunity back to the corporation to which they owe a fiduciary duty the burden is normally theirs to demonstrate the fairness of the agreement and the presumption of sound business judgment would be unavailable to them.—*Id.*

1972 Evidence in a stockholders' derivative action clearly supports a finding that the stock purchase plan under attack with its voting rights was actually designed for the purpose of helping to assist incumbent management to retain its long-time control over the affairs of the corporate defendant and was thus founded on self-interest in derogation of the fiduciary duty of the individual defendants. DEL. CODE ANN. tit. 8, § 144(a).—*Wards Foods, Inc. v. Lambert*, No. 2691, 1:137.

⇨ 213 Trial and judgment

1984 When ruling on a motion to dismiss a derivative action filed by a Special Litigation Committee, the court will inquire into the independence and good faith of the committee and reasonableness of the bases for its conclusions. Limited discovery may be permitted at the court's discretion to facilitate this inquiry. However, the purpose of any discovery at this stage is to aid the court in evaluating the motion to dismiss more so than to aid the plaintiff in developing facts to support the merits of his case.—*Kaplan v. Wyatt*, No. 6361, 9:205.

1984 A board's decision to refuse a demand letter falls within the business judgment rule and must be upheld unless the refusal was wrongful.—*Lewis v. Hett*, No. 6752, 10:240.

1979 Where plaintiffs' original complaint alleged improper management activities, relief proposed in a settlement agreement may be prospectively prophylactic rather than retroactively compensatory, because of the attendant difficulty of proof.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:367.

⇨ 214 Costs and expenses

1984 Where, in an action brought to remedy an alleged wrong to share-

holders, the corporate defendant is caused to take steps which serve to moot the case and by so doing produces the same or similar benefit sought by the shareholder litigation, counsel for the plaintiff shareholder will be compensated for the beneficial results that the suit is presumed to have produced, provided that the action was meritorious when filed and had a causal connection to the benefit conferred.—*Brennan v. Automated Marketing Systems, Inc.*, No. 6745, 10:616.

1984 Where the defendant's actions bring about the relief that the plaintiffs seek, and assuming the suit was meritorious when filed, the burden is on the defendants to establish that there was no causal connection between the plaintiff's suit and their action.—*Id.*

1984 A finding that the action was meritorious when filed and that there was a causal connection between the suit and the curative result brought about by the defendant amounts to a finding that the suit produced a benefit for the purpose of allowing an award of legal fees and expenses to counsel for plaintiff.—*Id.*

1984 A claim is meritorious within the meaning of the rule on allowance of counsel fees to a plaintiff shareholder if it can withstand a motion to dismiss on the pleading if, at the same time, the plaintiff possesses knowledge of provable facts which hold out some reasonable likelihood of ultimate success.—*Id.*

1984 The allowance of counsel fees, when warranted, lies in the discretion of the court.—*Id.*

1984 Where the defendants in a derivative suit take action which renders the derivative claim moot and which produces the same or similar benefits sought by the shareholder plaintiff in the litigation, the plaintiff is entitled to an allowance of counsel fees and expenses provided that the action was meritorious when filed and that the suit had a causal connection to the benefits conferred.—*Burlington Northern, Inc. v. Sterman*, No. 7050, 10:627.

1984 One who intervenes in a derivative action without contributing anything to the efforts of those who preceded him should not, as a matter of principle, be entitled to a separate award of counsel fees.—*Id.*

1984 Where the shareholder intervened in a derivative action brought by another shareholder as part of a tender offer bid by that shareholder, the intervenor played a valid role in the litigation in view of the private interest the first shareholder had in the outcome of the suit.—*Id.*

1984 An award of attorneys fees in a derivative action may be appropriate even where the benefit accruing to the corporation cannot be quantified.—*Weinberger v. Nelson*, No. 7256, 10:352.

1983 The decision under Rule 23 as to whether plaintiff or defendant should pay the cost of giving notice to the class lies within the discretion of the court, and is subject to review only on the basis of an abuse of discretion. DEL. CH. CT. R. 23.—*Weinberger v. UOP, Inc.*, No. 5642, 8:428.

1983 In a class action, the combination of a fiduciary relationship between the parties and the establishment of a prima facie case against the defendant may, along with considerations of fairness and equity, justify imposing the costs of giving notice to the class upon the defendant. DEL. CH. CT. R. 23.—*Id.*

1982 In determining the amount of counsel fees to be awarded in a lawsuit which did not result in the creation of a common fund inuring to the benefit of a class of litigants, the court's function is to focus on reimbursing the party for reasonable counsel fees actually incurred.—*Loretto Literary & Benevolent Institution v. Blue Diamond Coal Co.*, No. 5980, 8:362.

1982 Where counsel has represented minority shareholders and obtained a preliminary injunction in favor of the minority, the award of counsel fees is a matter left to the discretion of the court. The chancellor decides what

further evidence and testimony is required based upon the facts of the specific case and abuse of discretion is the ultimate test upon review.—*Roizen v. Multivest, Inc.*, No. 6535, 7:502.

1979 A monetary recovery by the corporation is not necessary to support the award of counsel fees so long as the litigation confers some benefit on the corporation.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:367.

1979 The proposition that a monetary recovery is not necessary to support the award of counsel fees so long as the litigation confers some benefit on the corporation applies to settlements as well as to final adjudications.—*Id.*

1979 Where long-term benefits of prophylactic relief and elimination of a disruptive minority accrues to the corporation and the immediate benefit of convertibility of common stock into marketable debentures accrues to present shareholders, it is not inappropriate to award counsel fees.—*Id.*

1979 All legal fees are not fully compensable to a plaintiff in a derivative action.—*Telvest, Inc. v. Olson*, No. 5798, 5:378.

1979 In determining legal fees in a derivative action, effort spent on individual claims can be segregated from effort spent on achieving a benefit for all stockholders.—*Id.*

1979 The award of legal fees in a derivative action is a discretionary act.—*Id.*

1978 Although time and effort of counsel are major elements and proper for consideration in setting a fee in a derivative action, it is also proper to estimate the value of a settlement to the corporation as part of fixing the award.—*Lewis v. Great Western United Corp.*, No. 5397, 4:248.

1978 In determining allowances to counsel in a successful shareholders' suit, consideration should be given to the amount recovered by the action, the standing and ability of counsel, the difficulty of litigation, and, most importantly, the amount of time and effort of counsel in connection with the case.—*Id.*

1978 When plaintiffs' counsel in a class and derivative action, following a settlement agreement, filed as part of their application for a fee allowance an affidavit setting forth in considerable detail the nature of their activities which indicated that their efforts were substantial, their failure to include statements of each and every hour expended did not preclude consideration of the merits of their application.—*Id.*

1978 In measuring the benefit conferred upon a class of former shareholders by a settlement of a class action in order to determine a proper fee award, the fact that the settlement doubled the amount of preferred dividends which would otherwise have been paid was of no small significance.—*Id.*

1978 In an action to determine attorneys' fees allocable to a settlement of a derivative action, the corporation's failure to object to the amount of counsel's claims was taken to mean that the corporate management considered it a proper amount for value inuring to the corporation.—*Id.*

1978 From the standpoint of a corporate security holder who is being compelled through merger to accept one form of security in lieu of another, a substituted security which carried mandatory provisions for the payment of interest and required the creation of a sinking fund to see to its ultimate redemption, and which had the potential for listing on a recognized stock exchange would command a greater trading value in the marketplace than a security which was dependent for its payment of periodic interest and ultimate redemption upon the beneficence and business priorities of corporate management and was not listed on the exchanges, the revised merger had created a substantial benefit for the class which warranted the allowance of an attorney fee determined in part with reference to the benefit created.—*Id.*

1978 In determining a fee allowance for attorneys in a settlement of a derivative action, the fact that a precise monetary value to the corporation cannot be determined does not prevent an allowance where it appears that there had been a substantial benefit.—*Id.*

1978 Since representative suits are considered therapeutic to the corporate system and are brought to prevent wrongs to the individual shareholders who would otherwise be unable to bear the cost of litigation, success should be generously rewarded in order to encourage other like suits and to discourage misconduct at the corporate level which would give rise to such suits.—*Id.*

1978 In a derivative suit where the fee is to be allocated by the court out of funds which would otherwise belong to others, generosity must not be unreasonably practiced at the enforced expense of others.—*Id.*

1978 In determining the precise amount of benefit to defendant corporation incurred by a settlement of a derivative action in order to award attorneys' fees, the facts that restructuring and recapitalization of the corporate enterprise were accomplished; the magnitude of appraisals precipitated by the original merger had been reduced; the net worth of the stock had been increased; the corporate image had been enhanced by the issuance and availability for listing of the more conventional type security than would have been issued under the terms of the original merger; plus the spectre of prolonged and costly litigation concerning the merger's propriety had been removed, together with the absence of any objection by the corporation to plaintiffs' claim, were persuasive that plaintiffs' claim should be approved.—*Id.*

1978 When fixing a fee allowance in a class or derivative action in Delaware, the results obtained are paramount to the hours spent in obtaining them as a starting point consideration in fixing a fee allowance in a class or derivative suit.—*Id.*

1978 Award of attorney's fees allocable to settlement of a class action was taken from fund of accumulated preferred dividends in order to create less of a burden on the class members.—*Id.*

1978 To allow the plaintiffs and their counsel to go uncompensated for the considerable risk and outlay of expenses that they undertook in achieving a favorable result for the benefit of all preferred shareholders of Great Western is repugnant to the overwhelming line of authority existing in this state that the overall therapeutic value of such representative suits in the corporate arena justifies a fair but generous reward for success.—*Id.*

1978 In measuring the benefit conferred upon a class of former shareholders by a settlement of a class action in order to determine a proper fee award, the absence of extended litigation, the fact that the settlement doubled the amount of preferred dividends which would otherwise have been available, along with consideration of other benefits incurred led to the conclusion that a fee allowance of $435,000 from the class was proper.—*Id.*

1975 Until there is a determination of what portion, if any, of the judgment amount should be allowed to a party for expenses, there is good reason to believe that the judgment is not ready for either payment or execution process.—*Levien v. Sinclair Oil Corp.*, No. 1883, 1:230.

1964 Where there is no finding that a merger is unfair, but the merger is restrained to determine fairness of exchange ratio, plaintiffs will be required to post appropriate bond with surety to cover any interim financing problems which result from the delay of the proposed merger.—*Stryker & Brown v. The Bon Ami Company*, No. 1945; *Gottlieb v. Lestoil Products, Inc.*, No. 1947, 2:157.

⟸ 218 Contracts and securities for payment of corporate liabilities

1984 To permit use of corporate escrow account funds to be diverted from their intended use as payment of a corporate bank loan, on which stockholders were jointly and severally liable, could cause irreparable harm to stockholders who might be called upon to personally repay the loan.—*Cahill v. Green*, No. 1094, 10:155.

⇐ 227 Extent of liability on subscription to stock —in general

1972 A corporate defendant has not been injured by reason of any act of conversion on the part of stock purchase plan participants whose participation in the plan was cancelled after the value of their shares had allegedly fallen.—*Wards Foods, Inc. v. Lambert*, No. 2691, 1:137.

⇐ 269(3) Evidence; weight and sufficiency

1977 Evidence in a counterclaim by corporate officers against a former officer for an accounting of funds was insufficient where no evidence was furnished as to the amounts or dates involved nor a demand made during a six year period prior to litigation.—*Brown v. Fenimore*, No. 4097, 3:552.

⇐ 281 Power to elect or appoint in general

1981 The appointment of a provisional director is only applicable to close corporations.—*Giuricich v. Emtrol Corp.*, No. 6423, 7:313.

⇐ 282 Eligibility

1978 The right of minority shareholders not to be frozen out of the corporate entity in the absence of a proper corporate purpose does not seem to translate into a corresponding minority right to be frozen into the board of directors where stock ownership interests do not otherwise support it.—*Savin Business Machines Corp. v. Rapifax Corp.*, No. 5331, 4:578.

⇐ 283 Election of directors

1981 DEL. CODE ANN., tit. 8, § 226 provides that the court of chancery may appoint a custodian for a corporation in the event that its shareholders are deadlocked and as a result are unable to elect successor directors.—*Giuricich v. Emtrol Corp.*, No. 6423, 7:313.

1981 Where corporation has failed to hold a meeting of shareholders for a period of more than thirteen months subsequent to its organization, the court of chancery has the authority to summarily order that a meeting be held and establish a date therefore. DEL. CODE ANN. tit. 8, § 211.—*Meredith v. Security America Corp.*, No. 6606, 7:341.

1981 The importance of an annual meeting of stockholders in the administration of corporate affairs is such that prompt relief is essential, particularly in a situation where there has never been a meeting of shareholders since the formation of a publicly held corporation and where rapidly developing events are placing shareholder investment in grave jeopardy. DEL. CODE ANN. tit. 8, § 211.—*Id.*

1979 Statutory method can be used to elect and remove directors of a corporation.—*Stellini v. Oratorio*, No. 5780, 5:362.

1978 The court of chancery may issue such orders as may be appropriate, including without limitation, orders designating the time and place, the record date for determination of stockholders entitled to vote, and the form of a meeting of shareholders where none has been held for more than thirteen months. DEL. CODE ANN. tit. 8, § 211(c).—*Palmer v. Arden-Mayfair, Inc.*, No. 5549, 4:617.

1978 Plaintiffs, stockholders, have no standing to bring an action to compel defendant corporation to hold its annual stockholders' meeting within ninety days of the expiration of its fiscal year, when the time requirement provisions of the state statute have not yet been met. DEL. CODE ANN. tit. 8, § 211(c).—*Sarabyn v. Jessco, Inc.*, No. 607, 4:610.

⇐ 283(1) Election of directors; requisites and validity in general

1985 An election of directors, or the

removal of directors with or without cause, unquestionably constitutes one form of shareholder action which can be taken at an annual or special shareholder meeting. DEL. CODE ANN. tit. 8, §§ 211, 141(k).—*Plaza Securities Co. v. O'Kelley*, No. 7932, 10:891.

1984 A corporation may have a single director. DEL. CODE ANN. tit. 8, § 141(b) (1983).—*Kirkland v. International Community Corp.*, No. 7577, 9:770.

1979 Statutory method can be used to elect and remove directors of a corporation.—*Stellini v. Oratorio*, No. 5780, 5:362.

⇨283(2) Election of directors; conduct of election and count of votes

1979 In an action by former directors of a corporation for reinstatement, the fact that both a meeting and a written consent were employed to relieve them of their positions is irrelevant to the outcome of the case.—*Stellini v. Oratorio*, No. 5780, 5:362.

1978 The court has the power, ancillary to ordering a shareholders' meeting for the election of directors, to also resolve doubts existing as to the manner of holding the election and the terms of the office to be voted upon. DEL. CODE ANN. tit. 8, § 211.—*Palmer v. Arden-Mayfair, Inc.*, No. 5549, 4:617.

1978 The method of electing directors and the regulation of directors' terms in office represent internal affairs of a corporation.—*Id.*

⇨283(3) Election of directors; proceedings to determine right to office

1984 In an action brought pursuant to DEL. CODE ANN. tit. 8, § 225, it is not a proper defense to assert that if plaintiffs are all declared to be in office so as to thereby constitute a majority of the board, they intended to liquidate the corporation in a manner designed to further their own pecuniary interests in disregard of the interests of public shareholders. DEL. CODE ANN. tit. 8, § 225.—*Bachmann v. Ontell*, No. 7805, 10:147.

1984 Any stockholder or director of a Delaware corporation may apply for a determination of the validity of any election of any director. DEL. CODE ANN. tit. 8, § 225.—*Kirkland v. International Community Corp.*, No. 7577, 9:476.

1979 Where board of directors is duly constituted, action taken at a board meeting wherein plaintiffs were relieved of directorial positions was proper.—*Stellini v. Oratorio*, No. 5780, 5:362.

1978 It is beyond statutory purpose to seek declaratory relief where no actual controversy exists. DEL. CODE ANN. tit. 8, §§ 225, 227.—*Palmer v. Arden-Mayfair, Inc.*, No. 5549, 4:617.

⇨291 Term of office and tenure

1981 The term of office for a corporate director expires only upon election of a successor.—*Giuricich v. Emtrol Corp.*, No. 6423, 7:313.

1978 The method of electing directors and the regulation of directors' terms in office represent internal affairs of a corporation.—*Palmer v. Arden-Mayfair, Inc.*, No. 5549, 4:617.

1978 The court has the power, ancillary to ordering a shareholders' meeting for the election of directors, to also resolve doubts existing as to the manner of holding the election and the terms of the office to be voted upon. DEL. CODE ANN. tit. 8, § 211.—*Id.*

⇨292 Resignation

1984 The validity of a director's resignation is a question of fact and loose and ambiguous language will not be regarded as sufficient proof.—*Bachman v. Ontell*, No. 7805, 10:149.

⇨294 Removal

1985 An election of directors, or the removal of directors with or without cause, unquestionably constitutes one form of shareholder action which can be taken at an annual or special shareholder meeting. DEL. CODE ANN. tit. 8, §§ 211, 141(k).—*Plaza Securities Co. v. O'Kelley*, No. 7932, 10:891.

1979 In an action seeking reinstatement as directors of the defendant cor-

poration, plaintiffs who were originally appointed with the understanding that they were to serve in such capacity "until the first annual meeting of the stockholders or until their successors shall be elected or appointed and shall qualify" enjoy no vested interest in a directorship of the corporation.—*Stellini v. Oratorio*, No. 5780, 5:362.

1979 Plaintiffs, who were originally appointed as directors of the corporation with the understanding that they would serve "until the first annual meeting of the stockholders or until their successors shall be elected or appointed", held office with the actual or implied knowledge that such right could be extinguished by the vote or consent of the majority stockholders.—*Id.*

1979 Where board of directors is duly constituted, action taken at a board meeting wherein plaintiffs were relieved of directorial positions was proper.—*Id.*

⊂= 295 Election or appointment of successor

1978 In an application for a temporary restraining order, plaintiffs-stockholders cannot complain that the board of directors of defendant corporation has not filled one vacancy on the board of directors when the filling of that vacancy would not have shown a reasonable probability of plaintiffs ultimate success since the four existing directors had already unanimously approved the merger in question, and the one vacancy would have made no difference to the plaintiffs.—*Sarabyn v. Jessco, Inc.*, No. 607, 4:610.

⊂= 297 Authority of directors

1981 Our corporation law specifically permits a Delaware corporation to be operated by one director, and all corporate offices to be held by one person. DEL. CODE ANN. tit. 8, §§ 141(b), 242(a).—*Gebelein v. Perma-Dry Waterproofing Co.*, No. 6210, 7:309.

1981 Under common law a director has a right of access to corporate books and records for any purpose germane to his position as a director.—*Estate of Polin v. Diamond State Poultry Co.*, No. 6374, 6:368.

1979 Action is valid under applicable statute where action taken by a corporation is of the type that may be taken at an annual or special shareholders' meeting; is consented to in a writing setting forth the action taken; and is signed by holders of outstanding stock having not less than the minimum number of votes that would have been necessary to authorize or take such action at a meeting. DEL. CODE ANN. tit. 8, § 228.—*Stellini v. Oratorio*, No. 5780, 5:362.

⊂= 298(1) Meeting of directors; necessity and legality of meeting

1979 In an action by former directors of a corporation for reinstatement, the fact that both a meeting and a written consent were employed to relieve them of their positions is irrelevant to the outcome of the case.—*Stellini v. Oratorio*, No. 5780, 5:362.

⊂= 298(4) Meeting of directors; presumption as to legality of meeting

1979 Where board of directors is duly constituted, action taken at a board meeting wherein plaintiffs were relieved of directorial positions was proper.—*Stellini v. Oratorio*, No. 5780, 5:362.

⊂= 298(6) Meeting of directors; proxies

1963 While the particular method of solicitation adopted by an officer, that is, inclusion of his letter with the proxy material, may be an unusual way of approach to other stockholders, it certainly cannot be regarded as forming the basis for a finding that the proxy statement was false and misleading.—*Bowling v. Bonneville, Ltd.*, No. 1688, 2:162.

⊂= 302 Secretary

1983 A stockholder vote approving an agency agreement places the burden of persuasion as to the unfairness of it upon the party asserting its un-

fairness.—*Khoury v. Oppenheimer*, No. 6734, 8:597.

⇐ 305 Delegation of authority

1983 An energy corporation's board of directors does not violate its statutory obligation to manage corporate affairs when, as part of the process to establish an exchange ratio for minority shares during merger negotiations, both companies assign an engineering firm the task of valuing their respective subsurface assets. This is true even if both boards agree to be bound by those valuations, although one board did not agree to weigh a particular asset in a particular way, thereby committing itself to any particular exchange ratio. DEL. CODE ANN. tit. 8, § 141(a).—*Rosenblatt v. Getty Oil Co.*, No. 5278, 8:366.

1983 A corporate board of directors does not have an absolute duty to bargain at arms' length in establishing asset values during merger negotiations. The board may rely on an honest and independent appraisal.—*Id.*

1982 The constitutional due process requirement of adequate notice has been met, where all stockholders are given notice of the class certification of a stockholder class action and are given an opportunity to opt out of the class or to interpose objections to a settlement.—*Lewis v. Fuqua Industries*, No. 6534, 7:478.

⇐ 306 Individual liability on corporate contracts and for unauthorized or illegal acts

1984 In order to hold an officer or director liable for inducing his corporation to breach its contractual obligations, the officer or director must engage in separate tortious conduct or activity that results in personal profit.—*Scopas Technology Co. v. Lord*, No. 7559, 10:306.

⇐ 307 Fiduciary nature of relation

1984 It is not a per se breach of fiduciary duty for a board to act in a manner which it may believe is contrary to the wishes of a majority of the company's stockholders.—*American International Rent A Car, Inc. v. Cross*, No. 7583, 9:144.

1981 A prerequisite to the imposition of a fiduciary duty is control and the use of it.—*Fisher v. United Technologies Corp.*, No. 5847, 6:380.

1979 The valuation of a block of stock together with its control factor is within the discretion of the directors of a corporation so long as they exercise good faith and act on a business-oriented motive.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:367.

1963 Something more than the bare fact that at some time in the past some third person had evinced an interest in the corporation assets, must be shown to warrant the conclusion that the offers entertained are not the highest and best available and that the directors have been derelict in their duty to obtain the best offer, and this duty does not require that the assets be placed upon the auction block.—*Bowling v. Bonneville, Ltd.*, No. 1688, 2:162.

⇐ 308(1) Compensation; right thereto in general

1977 Absent exceptions, where an implied contract is shown or where the amount awarded is not unreasonable under the circumstances, bonuses for past services already performed and for which compensation has been paid, without more, constitute an illegal gift of corporate assets.—*Williams v. Don Yerkes Fine Cars, Inc.*, No. 4777, 4:552.

⇐ 308(3) Compensation; contracts or resolutions providing therefor

1977 Absent exceptions, where an implied contract is shown or where the amount awarded is not unreasonable under the circumstances, bonuses for past services already performed and for which compensation has been paid, without more, constitute an illegal gift of corporate assets.—*Williams v. Don Yerkes Fine Cars, Inc.*, No. 4777, 4:552.

1975 When defendant employee

developed a breadboard which was patented alone by another individual, who received a relatively small equity in defendant corporation, plaintiff has failed to show that this product constitutes an "invention or discovery" within the meaning of the employee invention agreement.—*Science Accessories Corp. v. American Research & Development*, No. 4324, 1:446.

⇐ 308(5) Compensation; directors or trustees voting themselves salaries or increase

1975 Generally, salary increases for corporate directors brought about by the votes of the very directors who are to receive such increases are invalid and must be returned to the corporate treasury, however technical irregularities in such voting do not provide a sufficient basis to warrant judicial interference with corporate management, especially where the directors gaining the increase attempted to reach an agreement as to compensation which would be fair to themselves and the corporation.—*Barry v. Full Mold Process, Inc.*, No. 4740, 1:202.

⇐ 310 Management of corporate affairs in general

1980 An issuance of stock solely for the purpose of perpetuating or bringing about control is a breach of duties of a director.—*Jaffe v. Regensberg*, No. 5965, 6:318.

1963 Something more than the bare fact that at some time in the past some third person had evinced an interest in the corporation assets, must be shown to warrant the conclusion that the offers entertained are not the highest and best available and that the directors have been derelict in their duty to obtain the best offer, and this duty does not require that the assets be placed upon the auction block.—*Bowling v. Bonneville, Ltd.*, No. 1688, 2:162.

310(1) Management of corporate affairs in general; in general

1985 The business judgment rule affords presumptive protection to the actions of a corporation's board of directors.—*Citron v. Burns*, No. 7647, 10:830.

1985 If a planned takeover defense strategy, whether general and prospective or specific and reactive, was not primarily designed for entrenchment, it continued to enjoy the presumption that it was the result of good faith managerial judgment.—*Edelman v. Phillips Petroleum Co.*, No. 7899, 10:835.

1985 It is now well settled that the presumption of business judgment rule extends to the element of whether the judgment was an informed one, and in measuring directors' conduct to determine whether they were informed the applicable standard is one of gross negligence.—*Id.*

1985 The consideration for an Employee Incentive Stock Option plan may be viewed as valid, and since the creation of the EISOP serves a reasonable business purpose, the creation of the EISOP is not, in itself, invalid.—*Id.*

1985 The business judgment rule will not preclude review of conduct alleged to be void under the Delaware General Corporation Law or foreclose inquiry into the board's fiduciary duty to fairly disclose to shareholders all facts germane to the transaction involving the sale or retention of their shares, whether in full or in part.—*Id.*

1985 The claim of waste may satisfy the second prong or business judgment exception in *Aronson v. Lewis*.—*Id.*

1985 Liability will not be imposed upon a non-interested corporate director upon determination that self-tender is in the best interests of shareholders.—*Lowenschuss v. Option Clearing Corp.*, No. 7972, 10:882.

1984 The management of a corporation is subject to the business judgment of a majority of the directors and, in the absence of a showing of gross abuse, the court will not interfere in the exercise of that business

judgment.—*Cahill v. Green*, No. 1094, 10:155.

1984 Absent authority for the proposition, the business judgment rule cannot be utilized by a plaintiff to gain specific performance from the successor board of directors of a corporation for actions undertaken by the former board.—*DMG, Inc. v. Aegis Corp.*, No. 7619, 9:437.

1984 Directors are protected by the presumption of the business judgment rule in any consideration as to whether a demand should have been made on them by a derivative plaintiff prior to filing suit.—*Good v. Texaco, Inc.*, No. 7501, 9:461.

1984 The protection of the business judgment rule can only be claimed by disinterested directors; that is, the directors can neither appear on both sides of a transaction nor expect to derive any personal financial benefit from it in the sense of self-dealing. This differs from a benefit which devolves upon a corporation or all stockholders generally.—*Id.*

1984 A corporate board, in the exercise of its business judgment, should be free to conduct the corporation's business at a time and in a fashion which serves the corporation's best interests.—*Huffington v. Enstar Corp.*, No. 7543, 9:185.

1984 A corporate board's right to conduct the corporation's business is not unfettered when its action amounts to management usurping an unfair advantage in its dealing with the corporation's stockholders.—*Id.*

1984 If a corporate board's postponement of the corporation's annual meeting is to be condemned, it may be based on attendant circumstances that make it reasonably probable to assume that management intended to frustrate the vote of dissident stockholders.—*Id.*

1984 In order for the directors' acts to come within the business judgment rule, they must specifically address the challenged transaction.—*Lewis v. Hett*, No. 6752, 10:240.

1984 In an appraisal proceeding, all relevant factors including damages, where appropriate, are to be considered in determining fair value.—*Rabkin v. Philip A. Hunt Chemical Corp.*, No. 7547, 9:800.

1984 Managerial entrenchment is basically a matter of improper motivation in violation of a fiduciary duty.—*Sachs v. R.P. Scherer Corp.*, No. 7537, 9:234.

1984 In order to overcome the presumption of propriety afforded directors in their actions under the business judgment rule, plaintiffs must demonstrate a reasonable probability that the director's acts are not protected by the business judgment rule because they acted improperly.—*Thompson v. Enstar Corp.*, Nos. 7641 & 7643, 9:822, *Huffington v. Enstar Corp.*, No. 7543, 9:185.

1984 In determining whether the board of directors acted reasonably in accepting a particular tender offer, as compared with higher offers that arose later, the proper test is to measure the judgment of the directors on the facts as they existed at the time of the original offer, not in hindsight.—*Id.*

1984 The burden is upon the plaintiffs to show that the directors acted improperly in accepting a tender offer, and where the plaintiffs have failed, courts may not substitute their judgment for the rational judgment of the directors.—*Id.*

1982 The business judgment rule provides that room be afforded for honest differences of opinion in a corporate board of directors.—*Smith v. Pritzker*, No. 6342, 8:406.

1981 A shareholder may not complain of acts of corporate mismanagement if he knowingly acquired his shares from those who participated or acquiesced in the wrongful transaction.—*Darley Liquor Mart, Inc. v. Smith*, No. 5783, 6:411.

1979 The valuation of a block of stock together with its control factor is within the discretion of the directors of a corporation so long as they exercise good faith and act on a business-

oriented motive.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:367.

1979 It is unreasonable to believe that the corporation could expect or be expected to avoid paying for the control factor of a block of stock, since any other purchaser would be required to do so in the marketplace.—*Id.*

1964 While there is no doubt that management may spend additional money for advertising, if this increase was motivated by a desire to adjust the relative earning prospects of the two corporations to vindicate the proposed exchange ratio, the court would be justified in making its own estimates of income and expenses for purposes of fair valuation.—*Stryker & Brown v. The Bon Ami Company*, No. 1945; *Gottlieb v. Lestoil Products, Inc.*, No. 1947, 2:157.

⇨ 310(2) Management of corporate affairs in general; degree of care required and negligence

1985 In measuring the conduct of the defendant corporation's directors, the force of the business judgment rule applies with the concomitant requirement that director liability be established through proof of gross negligence.—*Repairman's Service Corp. v. Natl. Intergroup, Inc.*, No. 7811, 10:902.

1984 The business judgment rule is customarily invoked as a defense measure by directors who are being sued for an alleged impropriety.—*DMG, Inc. v. AEGIS Corp.*, No. 7619, 9:437.

1984 A fiduciary faced with two competing bids for the sale of the corporation's assets must accept the higher bid.—*Thompson v. Enstar Corp.*, Nos. 7641 & 7643, 9:822; *Huffington v. Enstar Corp.*, No. 7543, 9:185.

⇨ 312 Corporate property, funds, and securities

1985 Repurchase of a corporation's own shares falls within the purview of the business and affairs of a corporation and a board of directors can authorize repurchases through the tender offer device. DEL. CODE ANN. tit. 8, § 160(a).—*Lowenschuss v. Option Clearing Corp.*, No. 7972, 10:882.

⇨ 312(1) Corporate property, funds, and securities; liability for property and funds in general

1985 The consideration for an Employee Incentive Stock Option plan may be viewed as valid, and since the creation of the EISOP serves a reasonable business purpose, the creation of the EISOP is not, in itself, invalid.—*Edelman v. Phillips Petroleum Co.*, No. 7899, 10:835.

1977 Absent exceptions, where an implied contract is shown or where the amount is not unreasonable under the circumstances, bonuses for past services already performed and for which compensation has been paid, without more, constitute an illegal gift of corporate assets.—*Williams v. Don Yerkes Fine Cars, Inc.*, No. 4777, 4:552.

⇨ 312(5) Corporate property, funds, and securities; purchase and sale of property in general

1984 Barring fraud or unfairness, a stock repurchase is not rendered illegal because the motivation is to eliminate a substantial number of shares held by a stockholder at odds with management policy.—*Lewis v. Daum*, No. 6733, 9:481.

1984 A naked allegation in a complaint that a premium was paid to repurchase shares does not automatically state a wrong without more.—*Id.*

1979 It is well settled that a Delaware corporation may purchase its own shares for a valid corporate purpose.—*Fisher v. Moltz*, No. 6068, 5:530.

1963 Where directors, though evenly divided as to which offer of purchase is the best, do recommend a sale of assets and approval of one of the other

of the two proposals, the stockholders should be the only body to break the deadlock, it being impossible for an evenly divided board to recommend the one or the other. DEL. CODE ANN. tit. 8, § 271.—*Bowling v. Bonneville, Ltd.*, No. 1688, 2:162.

⊂=312(6) Corporate property, funds, and securities; purchase at judicial foreclosure and tax sale against corporation

1980 A fifty percent shareholder owes no fiduciary duty to corporation to bid the fair market value of the land at a sheriff's sale.—*Fisher v. Smith*, No. 4531, 6:340.

1980 Price which is more than half the value of land at a foreclosure is not so shockingly low as to set aside sale where the land is purchased by a fifty percent shareholder of selling corporation.—*Id.*

1980 A fifty percent shareholder owes no fiduciary duty to bail the corporation out of all its debt simply because another corporate entity of which he is a controlling shareholder is able to acquire the debt held by third parties against the corporation which the corporation itself was unable to pay.—*Id.*

⊂=312(7) Corporate property, funds, and securities; right to question transactions, and estoppel and acquiescence

1974 Where stockholder alleges that the sale of an opportunity from corporate officers back to the corporation approved by the stockholder is inherently unfair to the corporation, the court will look to see only if the terms are so unequal as to amount to a waste of corporate assets.—*Fliegler v. Lawrence*, No. 3647, 1:145.

⊂=313 Acquiring adverse title or interest

1975 An employee of plaintiff has a duty to attempt to obtain a discovery which he has developed for the plaintiff employer corporation. That duty is personal to the employee. Breach of that duty would not justify preliminary injunctive relief against defendant corporation.—*Science Accessories Corp. v. American Research & Development*, No. 4324, 1:446.

1963 The fact that the soliciting stockholder is president of the corporation and a director of its board, which is evenly divided as to the propriety of the proposed action, in no way affects the stockholder's right of solicitation, and authority to solicit is not required.—*Bowling v. Bonneville, Ltd.*, No. 1688, 2:162.

⊂=314(1) Individual profits or benefits from corporate business; breach of duty and liability therefor in general

1980 The purpose of the stay was to allow for the continuity of incumbent management and to thus provide corporation stability, but at the same time to attempt to insure during the pendency of the appeal that incumbent management would take no action designed to entrench or personally benefit themselves.—*Grynberg v. Burke*, No. 5198, 6:230.

1977 A corporate officer, who is presented a business opportunity which the corporation is financially able to undertake and which falls into the line of the corporation's business, is prohibited from permitting his self-interest to be exercised in conflict with the corporation's interest and may not take the opportunity for himself.—*Brown v. Fenimore*, No. 4097, 3:552.

1977 Corporate officers, as fiduciaries, may not profit from their positions of trust and when challenged, bear the burden of proving that transactions with the corporation, in which they have a personal interest, are fair.—*Holloway v. Sharon Land Co.*, Nos. 5001 & 4717, 3:578.

1975 Evidence showing an employee's many unexplained absences from work, his alleged deceptions, his PXE

notebook, and his long distance phone calls, merely strengthens the preliminary finding that this employee, and perhaps others, breached a fiduciary relationship as plaintiff's employees by participating in the organization of defendant corporation. But this breach of trust does not justify granting a preliminary injunction which is largely directed against defendant corporation. Defendant corporation is not automatically the alter ego of the individual defendants.—*Science Accessories Corp. v. American Research & Development*, No. 4324, 1:446.

1975 An employee of plaintiff has a duty to attempt to obtain a discovery which he has developed for the plaintiff employer corporation. That duty is personal to the employee. Breach of that duty would not justify preliminary injunctive relief against defendant corporation.—*Id.*

⇐ 314(2) Individual profits or benefits from corporate business; individual interest in and profits from contracts in general

1984 Barring fraud or unfairness, a stock repurchase is not rendered illegal because the motivation is to eliminate a substantial number of shares held by a stockholder at odds with management policy.—*Lewis v. Daum*, No. 6733, 9:481.

1983 A corporation has the right to purchase its own stock for any proper corporate purpose. This right may be used to purchase the shares of a troublesome minority in order to preserve or make more efficient the operations of the corporation.—*Khoury v. Oppenheimer*, No. 6734, 8:597.

1982 Where a corporation, through director approval, seeks to purchase its own shares from a shareholder in order to remove such shareholder who is deemed inimical to corporate policy, a test of reasonable and fair judgment, and good faith in agreeing upon the price is to be applied.—*Valhi v. PSA*, No. 5730, 7:516.

1975 If the purpose to which the trust is directed is to maintain what the board reasonably believes to be proper business practices, they do not offend the law or policy encompassed in Delaware law and consequently impose no impediment to the validity and enforcement of the trust containing a limited restraint on alienation. DEL. CODE ANN. tit. 8, § 202.—*Fixman v. Diversified Industries, Inc.*, No. 4721, 1:171.

⇐ 315 Engaging in competing business

1979 It is not wrong *per se* for a corporate officer to purchase shares in his own corporation where he is not in conflict with any existing plan or expectant interest of the corporation.—*Field v. Allyn*, No. 5951, 5:357.

1979 When a business opportunity comes to a corporate officer, which, because of the nature of the opportunity is not one which is essential or desirable for his corporation to embrace, being an opportunity in which it has no actual or expectant interest, the officer is entitled to treat the business opportunity as his own and the corporation has no interest in it, provided the officer has not wrongfully embarked the corporation's resources in order to acquire the business opportunity.—*Id.*

1979 An employee does not deprive his employer of a corporate opportunity when the opportunity comes to the employee from someone who has no relationship with the employer and who does not desire the employer to have the opportunity.—*Science Accessories Corp. v. American Research & Development*, No. 4324, 5:523.

1979 A party has no duty to turn over to his employer something he worked on but did not invent, under the terms of a contract that requires the party to turn all his inventions over to his employer.—*Id.*

1979 A corporate officer need not turn over to the corporation an opportunity which is not essential or desirable to the corporation.—*Id.*

1979 An employee does not breach a fiduciary duty by not disclosing a corporate opportunity to his employer, when the employee has a duty of confidentiality imposed upon him not to disclose the opportunity to the employer, before any information is revealed to the employer.—*Id.*

1979 In the absence of an employment contract to the contrary, it is not a breach of fiduciary duty for an employee to make arrangement to leave his employer and start a competing business.—*Id.*

1977 A constructive trust will be imposed upon all profits derived from a corporate officer's competing service during the period he held office as an officer or director.—*Brown v. Fenimore*, No. 4097, 3:552.

1977 A corporate opportunity is not usurped when at the time the corporation was without means to continue its existing business let alone to avail itself of something new.—*Williams v. Don Yerkes Fine Cars, Inc.*, No. 4777, 4:552.

1975 Evidence showing an employee's many unexplained absences from work, his alleged deceptions, his PXE notebook, and his long distance phone calls, merely strengthens the preliminary finding that this employee, and perhaps others, breached a fiduciary relationship as plaintiff's employees by participating in the organization of defendant corporation. But this breach of trust does not justify granting a preliminary injunction which is largely directed against defendant corporation. Defendant corporation is not automatically the alter ego of the individual defendants.—*Science Accessories Corp. v. American Research & Development*, No. 4324, 1:446.

1974 Even when an opportunity comes to a corporate officer as an individual, certain conditions are imposed upon him before he may exercise it for his own advantage: it must not be an oportunity which is essential to his corporation's business; it must not be an opportunity in which his corporation has an expectant interest; in exercising it for himself he must not use corporate resources to generate his personal endeavor; and, in the event the first two elements are present, the officer may still take the opportunity as his own if his corporation is financially unable to do so.—*Fliegler v. Lawrence*, No. 3647, 1:145.

1974 The right of a corporate officer to appropriate an opportunity for himself "depends upon the circumstances existing at the time it presented itself to him without regard to subsequent events, and due weight should be given to the character of the opportunity. . . ."—*Id.*

⊂⊃316(1) Dealings with corporation or shareholders; contracts in general

1985 The right of an informed board of directors to acquire the shares of a dissident at a premium is well established in Delaware.—*Citron v. Burns*, No. 7647, 10:830.

1984 Where defendants stand on both sides of a transaction, they are under a fiduciary duty to the minority shareholders of the corporation.—*Joseph v. Shell Oil Co.*, No. 7450, 9:191.

1983 A corporation has the right to purchase its own stock for any proper corporate purpose. This right may be used to purchase the shares of a troublesome minority in order to preserve or make more efficient the operations of the corporation.—*Khoury v. Oppenheimer*, No. 6734, 8:597.

1979 In order to effect purchases of shares of a troublesome minority, a premium may be paid for the stock purchased, and the premium so paid need not be offered to the corporation's other stockholders.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:367.

1979 The valuation of a block of stock together with its control factor is within the discretion of the directors of a corporation so long as they exercise good faith and act on a business-oriented motive.—*Id.*

1979 When a business opportunity comes to a corporate officer, which,

because of the nature of the opportunity is not one which is essential or desirable for his corporation to embrace, being an opportunity in which it has no actual or expectant interest, the officer is entitled to treat the business opportunity as his own and the corporation has no interest in it, provided the officer has not wrongfully embarked the corporation's resources in order to acquire the business opportunity.—*Field v. Allyn*, No. 5951, 5:357.

1979 It is well settled that a Delaware corporation may purchase its own shares for a valid corporate purpose.—*Fisher v. Moltz*, No. 6068, No. 5:530.

1979 Corporate directors owe a fiduciary duty to the stockholders of a Delaware corporation. The burden is imposed upon the corporation to show that there is a valid corporate purpose for limiting the offer to purchase shares and that in doing so it has not unduly favored one group over another.—*Id.*

1974 The validity of a transaction between a dominating director and his corporation is subject to strict scrutiny and depends upon whether the proposition submitted would have commended itself to an independent corporation based upon the situation existing at the time the transaction occurred. DEL. CODE ANN. tit. 8, § 144(a)(2).—*Fliegler v. Lawrence*, No. 3647, 1:145.

316(3) Dealings with corporation or shareholders; sale of stock to officer

1980 Where shares have been improperly issued to a director in breach of his duty to corporation, and where he is properly before the court as a party, such shares may be ordered cancelled as part of relief to be granted.—*Jaffe v. Regensberg*, No. 5965, 6:318.

1979 It is unreasonable to believe that the corporation could expect or be expected to avoid paying for the control factor of a block of stock, since any other purchaser would be required to do so in the marketplace.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:367.

1979 A corporation's right to purchase its own stock may be used to purchase the shares of a troublesome minority in order to preserve or make more efficient the operations of the corporation.—*Id.*

1979 It is not improper *per se* for a plaintiff stockholder to end up having his stock purchased by the nominal defendant corporation at a slight premium if the benefits to the corporation outweigh the suspicions aroused.—*Id.*

1979 It is not wrong *per se* for a corporate officer to purchase shares in his own corporation where he is not in conflict with any existing plan or expectant interest of the corporation.—*Field v. Allyn*, No. 5951, 5:357.

⊂⊃ 316(4) Dealings with corporation or shareholders; ratification

1985 The standard which governs proxy information is that of complete candor and requires corporate directors to disclose to their shareholders all facts germane to the transaction at hand.—*Repairman's Service Corp. v. Nat'l. Intergroup, Inc.*, No. 7811, 10:902.

1985 The scope of disclosure in the context of a tender offer is all information such as a reasonable shareholder would consider important in deciding whether to sell or retain stock.—*Id.*

1985 With respect to a merger in which a shareholder would exchange his investment for one in a different entity, full disclosure would encompass all information that a reasonable shareholder would consider important in deciding whether to alter his investment at the stated exchange ratio.—*Id.*

1985 An alleged proxy omission must be a factual statement to state a claim. —*Weingarden v. Meenan Oil Co.*, Nos.

7291 & 7310, 10:666.

1974 Where stockholder alleges that the sale of an opportunity from corporate officers back to the corporation approved by the stockholder is inherently unfair to the corporation, the court will look to see only if the terms are so unequal as to amount to a waste of corporate assets.—*Fliegler v. Lawrence*, No. 3647, 1:145.

⇐ 316(5) Dealings with corporation or shareholders; who may sue or attack transaction

1975 When an employment contract is given as part consideration for the creation of a trust affecting the voting power of a shareholder, such consideration is not invalid when the employee was valuable to the company and it was given as part of an agreement which sought to effectuate a valid business purpose.—*Fixman v. Diversified Industries, Inc.*, No. 4721, 1:171.

317(3) Fraud as against corporation or shareholders; fraudulent breach of trust in general

1977 A constructive trust will be imposed upon all profits derived from a corporate officer's competing service during the period he held office as an officer or director.—*Brown v. Fenimore*, No. 4097, 3:552.

1977 Receipt and retention by a corporate officer for his personal use of rebates and cash discounts by oil company in connection with service station operation was improper and officer will be required to account for and pay the full amount received by him to the corporation.—*Id.*

⇐ 318 Officer or agent of different corporations

1984 Despite potential conflicts of interest, there is no basis to disqualify one from serving as director of a corporation where there is no showing he has taken action detrimental to the corporation.—*Kirkland v. International Community Corp.*, No. 7577, 9:770.

1984 Transactions by interested directors may be voidable.—*Id.*

1984 An interested director may have the burden of proving the entire fairness of his transaction.—*Id.*

1979 Where the entity that acquires a controlling stock interest has a principal other than the two executive officers of the controlled corporation, namely a separate corporation with a fifty-one percent voting interest, there is no clear showing that corporate fiduciaries have embarked the corporation's resources in order to gain a business opportunity for themselves, so as to support a temporary restraining order.—*Field v. Allyn*, No. 5951, 5:357.

⇐ 319 Actions between corporation and its officers or agents

1980 A nonresident defendant, by agreeing to serve as a director of a Delaware corporation, consents that service upon his statutory agent will amount to *in personam* jurisdiction over him as to any action filed in the courts of Delaware, arising out of his alleged violations of his duty as a director.—*Jaffe v. Regensberg*, No. 5965, 6:318.

1975 Repeal of resolutions for the proposed defensive corporate structural changes does not constitute illegal manipulation of the corporate machinery.—*Fixman v. Diversified Industries, Inc.*, No. 4721, 1:171.

⇐ 319(7) Actions between corporation and its officers or agents; evidence

1984 Where agreements entered into by the corporation were made for the benefit of the defendant, and the directors who approved the agreements were controlled by the defendant, the agreements under attack are not protected by the presumption of

propriety of the business judgment rule.—*Andresen v. Bucalo*, No. 6372, 9:149.

1984 Where the business judgment rule does not shield the transaction from judicial scrutiny, the agreements must be examined to see if they are fair to the corporation.—*Id.*

1974 The validity of a transaction between a dominating director and his corporation is subject to strict scrutiny and depends upon whether the proposition submitted would have commended itself to an independent corporation based upon the situation existing at the time the transaction occurred. DEL. CODE ANN. tit. 8, § 144(a)(2).—*Fliegler v. Lawrence*, No. 3647, 1:145.

⇐320(1) Actions between shareholders and officers or agents; in general

1985 To secure the extraordinary relief of a preliminary injunction to prevent consummation of a merger after its apparent approval by affected shareholders, plaintiff must make a clear showing of entitlement.—*Repairman's Service Corp. v. Nat'l. Intergroup, Inc.*, No. 7811, 10:902.

1984 The elimination of corporate disharmony, while intangible, is nonetheless a real benefit to the corporation and its shareholders and an end which the directors may properly seek to achieve through the expenditure of corporate funds.—*Grubb v. Bernstein*, No. 6998, 10:210.

1977 Illegal act or breach of fiduciary duty, without damage to the corporation or profit to the officer or director, will not support a derivative action.—*Citron v. Merritt-Chapman & Scott Corp.*, No. 3130, 4:237.

⇐320(4) Actions between shareholders and officers or agents; right to sue, and parties in general

1982 In order to bring any type of derivative action to correct alleged acts of corporate mismanagement, it is necessary that the plaintiff either be a stockholder at the time of the transaction complained of, or that his stock thereafter devolve upon him by operation of law. DEL. CODE ANN. tit. 8, § 327.—*Brown v. Automated Marketing Systems, Inc.*, No. 6715, 7:466.

1982 The right of a stockholder to sue exists because of special injury to him for which otherwise he is without redress. If his interest is trifling, and the injury therefore of no consequence, he cannot sue to compel righting of wrongs to the corporation.—*Id.*

1982 The purchaser of corporate stock ought to take things as he found them when he voluntarily acquired an interest. So long as he is not injured in what he got when he purchased, and holds exactly what he got and in the condition in which he got it, there is no ground for complaint.—*Id.*

1982 One who held no stock at the time of the mismanagement ought not to be allowed to sue, unless the mismanagement or its effects continue and are injurious to him, or it affects him specially and peculiarly in some other manner.—*Id.*

1981 The mere fact that a director abstains from voting (in a Board of Directors' meeting) on a corporate transaction does not *prima facie* absolve a director from liability for that transaction.—*Dalton v. American Investment Co.*, No. 6305, 6:402.

1981 Where a director abstains from voting on a corporate transaction, it is necessary to view all of the relevant facts in relation to the abstention in order to determine liability.—*Id.*

1981 Where there was an insufficient record to determine the director's good faith for abstaining from a Board meeting vote on a corporate transaction, summary judgment would be inappropriate.—*Id.*

⇐320(5) Actions between shareholders and officers or agents; failure of

action by corporation and demand that action be brought

1984 Compliance with the demand requirement of Rule 23.1 is tested against that which the plaintiff has alleged in his complaint and not against factual matter put forth by the defendants by way of explanation or mitigation of the factual allegations of the complaint. DEL. CH. CT. R. 23.1.—*Good v. Texaco, Inc.*, No. 7501, 9:461.

1984 The mere allegation of ownership of twenty percent of a corporation's stock, absent any allegation of facts showing an exercise of control, is not sufficient to state a claim based on domination of the board.—*Wilen v. Pollution Control Indus., Inc.*, No. 7254, 10:357.

⇐ 320(7) Actions between shareholders and officers or agents; bill, petition; or complaint in general

1984 The mere allegation of ownership of twenty percent of a corporation's stock, absent any allegation of facts showing an exercise of control, is not sufficient to state a claim based on domination of the board.—*Wilen v. Pollution Control Indus., Inc.*, No. 7254, 10:357.

⇐ 320(11) Actions between shareholders and officers or agents; evidence

1985 It is now well settled that the presumption of business judgment rule extends to the element of whether the judgment was an informed one, and in measuring directors' conduct to determine whether they were informed the applicable standard is one of gross negligence.—*Edelman v. Phillips Petroleum Co.*, No. 7899, 10:835.

1984 Plaintiff has the burden of rebutting the presumption of the business judgment rule that the board acted to amend the bylaw in the good faith belief that such action was in the best interests of the company and its stockholders. That burden is not met when plaintiff contends that the board amended the bylaw for the inequitable purpose of disenfranchising the stockholders if, although the board's action had the effect of withdrawing a vote from the stockholders, the board's purpose was to enable the company to go forward with a stock sale to obtain needed funds.—*American International Rent A Car, Inc. v. Cross*, No. 7583, 9:144.

1983 The fact that plaintiffs will receive a premium for their stock as part of a settlement does not preclude the approval for the settlement.—*Khoury v. Oppenheimer*, No. 6734, 8:597.

1982 Where a corporation, through director approval, seeks to purchase its own shares from a shareholder in order to remove such shareholder who is deemed inimical to corporate policy, a test of reasonable and fair judgment, and good faith in agreeing upon the price is to be applied.—*Valhi v. PSA*, No. 5370, 7:516.

1979 Assumptions of bad faith on the part of management are not recognized by the court in a proceeding for approval of a proposed settlement agreement.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:367.

1979 In the absence of evidence to the contrary, the presumption is that directors acted in good faith in reaching a decision to purchase stock.—*Id.*

1979 Where the entity that acquires a controlling stock interest has a principal other than the two executive officers of the controlled corporation, namely a separate corporation with a fifty-one percent voting interest, there is no clear showing that corporate fiduciaries have embarked the corporation's resources in order to gain a business opportunity for themselves, so as to support a temporary restraining order.—*Field v. Allyn*, No. 5951, 5:357.

1979 It is well settled that a Delaware corporation may purchase its own shares for a valid corporate purpose.—*Fisher v. Moltz*, No. 6068, 5:530.

1979 Under the intrinsic fairness test the burden of showing the entire fairness of a challenged transaction rests with the entity which controls the corporation.—*Schreiber v. Bryan*, No. 4250, 5:381.

1979 When a challenged transaction had been ratified by a majority of a corporation's stockholders, the burden of proof shifts to the challenging party to show the unfairness of the transaction.—*Id.*

1977 Loss or damages to the corporation cannot be inferred from general and indefinite allegations, and the mere assertion that conduct was "to the detriment" of the corporation is insufficient to recover against an officer or employee.—*Citron v. Merritt-Chapman & Scott Corp.*, No. 3130, 4:237.

⊂320(12) Actions between shareholders and officers or agents; damages or amount of recovery

1984 The result achieved by counsel on a meritorious claim is only one of several factors to be considered in determining an appropriate award; others include counsel's standing and ability, the time and effort devoted to the litigation, the complexity of the issues, and any contingency factor.—*Weinberger v. Nelson*, No. 7256, 10:352.

1977 Corporate compensation is recoverable where disloyalty of the officer or director constitutes the usurpation of a corporate opportunity.—*Citron v. Merritt-Chapman & Scott Corp.*, No. 3130, 4:237.

⊂320(13) Actions between shareholders and officers or agents; injunction and receiver

1984 Record on plaintiff shareholder's application for preliminary injunction to enjoin reclassification of the common stock of the corporation failed to establish that reclassification was an attempt by defendant principal shareholder to entrench present management.—*Sachs v. R.P. Scherer Corp.*, No. 7537, 9:234.

1979 A corporate transaction will not be enjoined where there has not yet been shareholder approval and the facts are such that even if the transaction is approved, if later found to be unfair, it can easily be undone.—*Cascella v. GDV, Inc.*, No. 5899, 5:519.

⊂333 Misappropriation of corporate assets

1977 Corporate officer is personally liable to the corporation for balance due on loan he authorized to employee where the corporate funds advanced do not represent compensation to employee, the note was not authorized by directors of the corporation, and the note could not have reasonably been expected to benefit the corporation when made. DEL. CODE ANN. tit. 8, § 143.—*Williams v. Don Yerkes Fine Cars, Inc.*, No. 4777, 4:552.

⊂337 Incurring debt exceeding capital

1975 Where an Indenture contract provides for repayment as its prime obligation, it should not be read to contemplate the wrongful elimination of one corporation's liquidity at the expense of the debenture holders on the part of a company owing the other corporation.—*Farland v. Wills*, No. 4888; *Bank of America v. GAC Properties, Inc.*, No. 4914, 1:467.

⊂340(1) Debts to which liability extends; in general

1977 Corporate officer is personally liable to the corporation for balance due on loan he authorized to employee where the corporate funds advanced do not represent compensation to employee, the note was not authorized by directors of the corpora-

tion, and the note could not have reasonably been expected to benefit the corporation when made. DEL. CODE ANN. tit. 8, § 143.—*Williams v. Don Yerkes Fine Cars, Inc.*, No. 4777, 4:552.

⊂⊃342 Persons liable

1977 Corporate officer is personally liable to the corporation for balance due on loan he authorized to employee where the corporate funds advanced do not represent compensation to employee, the note was not authorized by directors of the corporation, and the note could not have reasonably been expected to benefit the corporation when made. DEL. CODE ANN. tit. 8, § 143.—*Williams v. Don Yerkes Fine Cars, Inc.*, No. 4777, 4:552.

⊂⊃355 Jurisdiction and venue

1982 It is neither the purpose nor important of section 3104 that because a Delaware corporation is transacting business in Delaware its nonresident officers are subject to personal service of process for alleged consumer wrongs or deceptive trade practices committed in the name of the corporation. DEL. CODE ANN. tit. 10, § 3104.—*Gebelein v. Perma-Dry Waterproofing Co.*, No. 6210, 7:309.

1982 Section 3104 contemplates conduct by an individual in his individual capacity if personal jurisdiction over him is to be obtained under the procedure established in the statute. DEL. CODE ANN. tit. 10, § 3104.—*Id.*

1981 The burden of alleging and proving the necessary jurisdictional facts lies with the plaintiff.—*Id.*

⊂⊃370(1) Scope of corporate power in general; in general

1979 A provision in the certificate of incorporation allowing for a shifting vote differing upon the subject matter being voted upon and conferring discretion on the board of directors to decide the subject matter is within the powers of such directors and not contrary to public policy under the laws of Delaware.—*Seibert v. Gulton Industries, Inc.*, No. 5631, 5:514.

1979 A provision in a certificate of incorporation which provides for a vote of a supermajority of 80% when a 5% shareholder alone proposes a merger or takeover yet requires only approval of the board and a majority shareholder vote for a takeover proposed before 5% is acquired is a valid provision for the management of corporate affairs. DEL. CODE ANN. tit. 8, § 102(b)(1).—*Id.*

⊂⊃372 Construction of charters and acts of incorporation

1978 In reviewing an instrument creating stock preferences, where the language is contradictory or ambiguous, or where its meaning is doubtful, or such that it is susceptible of two constructions, one of which makes it fair, customary and such as prudent men would naturally execute, while the other makes it inequitable, unusual, or such as reasonable men would not be likely to enter into, the interpretation which makes it rational and probable must be preferred to that which makes it unusual or unfair.—*Maxwell v. Aristar, Inc.*, No. 4798, 4:530.

1978 To ascertain whether the certificate of rights gives the preferred stockholders the right to participate, along with the common stockholders, in the receipt of new stock from defendant corporation, all the provisions of the certificate of rights must be considered.—*Wood v. Coastal States Gas Corp.*, No. 5696, *Hook v. Wyatt*, No. 5719, 5:326.

⊂⊃376 Purchasing and holding corporation's own stock

1979 A corporation has a right to purchase its own stock for any proper corporate purpose. DEL. CODE ANN. tit. 8, § 160(a).—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:367.

1979 A corporation's right to purchase its own stock may be used to purchase

the shares of a troublesome minority in order to preserve or make more efficient the operations of the corporation.—*Id.*

1977 Under Delaware law, a corporation has the power to purchase its own stock. DEL. CODE ANN. tit. 8, § 160.—*Citron v. Merritt-Chapman & Scott Corp.*, No. 3130, 4:237.

1977 The purchase by a corporation of a substantial block of its own stock at a price in excess of market does not make the purchase an unfair transaction.—*Id.*

1975 The Delaware statute forbids a corporation from purchasing its own capital stock when the capital of the corporation is impaired or when such purchase would cause any impairment of the corporation, and while a formal appraisal is not required, the directors are under a duty to evaluate the assets on the basis of acceptable data and by standards which they are entitled to believe reasonably reflect present values. DEL. CODE ANN. tit. 8, § 160.—*Farland v. Wills*, No. 4888; *Bank of America v. GAC Properties, Inc.*, No. 4914, 1:467.

1975 It is generally true that the acquisition of its own capital stock is not ordinarily an essential corporate function, and a corporation should not be able to become a purchaser of its own stock when it results in a fraud upon the rights of, or injury to, the creditors.—*Id.*

⇐ 377(2) Purchasing and holding stock in other corporations; purchase of stock

1982 Where there is a non-freeze out tender offer, which the individual stockholders may accept or reject as they wish, there is no duty to offer any particular sum to the stockholders as long as the requirements of full disclosure are complied with.—*Lewis v. Fuqua Industries*, No. 6534, 7:478.

1979 An outside business organization has no independent fiduciary duty not to use a portion of that acquired to defray the costs of acquisition.—*Field v. Allyn*, No. 5951, 5:357.

⇐ 378 Combination, pools, and associations

1981 One corporation does not become the agent of another merely because a majority of its voting shares is held by the other.—*Rothchild International Corp. v. Liggett Group, Inc.*, No. 6239, 6:421.

⇐ 393 Judicial supervision

1984 To invoke the protection of the sound business judgment rule, directors have a duty to inform themselves, prior to making a business decision, of all material information reasonably available to them.—*Reading Co. v. Trailer Train Co.*, No. 7422, 9:223.

1984 A board of directors enjoys a presumption of sound business judgment, and its decisions will not be disturbed if they can be attributed to any rational business purpose.—*Id.*

1980 A stay is inoperative if the right to appeal is to have any meaning, especially where the decision to be stayed relates to the control of a corporate enterprise.—*Grynberg v. Burke*, No. 5198, 6:226.

1975 Where there is no evidence of self-dealing, abuse of discretion, a breach of trust, or fraud, a board of directors enjoys a presumption of sound business judgment, and its decisions will not be disturbed if they can be attributed to any rational business purpose.—*Liboff v. Allen*, No. 2669, 2:350.

1975 Corporate directors are accorded wide discretion in the area of valuation and as long as they have reached their determination in an informed manner, in apparent good faith and for rational business purposes, they are entitled to the benefit of the business judgment rule and in such case a court should not substitute its concept of value in place of that of the board and the independent evaluators on which it relied.—*Id.*

⊂ 394.6(9) Simplification of systems; common stockholders' rights

1978 A claim for appraisal in a corporate merger proceeding will be disallowed as being the claim of a preferred, rather than a common, stockholder.—*Carico v. McCrory Corp.*, No. 5160, 4:595.

⊂ 399(1) Actual or apparent authority; in general

1980 Actual authority of agent of corporation may consist of express authority granted agent either by stockholders, corporate charter, bylaws, or corporate action by stockholders or board of directors or it may amount to implied authority springing by necessary inference from those powers expressly granted to agent.—*Agency Rent-A-Car, Inc. v. Gateway Industries, Inc.*, No. 6109, 6:322.

⊂ 408 Transactions concerning corporate stock

1978 Where a corporation in financial distress issues stock as a means to raise needed capital, its directors are given considerable latitude in fixing the price for the issuance.—*Savin Business Machines Corp. v. Rapifax Corp.*, No. 5331, 4:578.

⊂ 413 Borrowing and loaning money

1980 Person, who was corporation's president and chief-operating officer, had actual authority to make the formal demand for list of the defendant's stockholders and corporate books and records.—*Agency Rent-A-Car, Inc. v. Gateway Industries, Inc.*, No. 6109, 6:322.

⊂ 422(2) Representations or admissions; directors

1974 The statute does not require that a corporation's chairman include a corporate resolution in a demand letter for a list of stockholder names and addresses where the demand was notarized, the chairman having sworn under oath that he was chairman of plaintiff corporation and as such was authorized to make the demand; where statements make in the demand were true to the best of his knowledge and belief; where the demand was not made for any improper purpose; and where the accuracy of his averments were established at his deposition. DEL. CODE ANN. tit. 8, § 220.—*Tannetics, Inc. v. A.J. Industries, Inc.*, No. 4592, 2:348.

⊂ 426(1) Ratification and repudiation; in general

1985 Since much of the conduct here under review will be subjected to shareholder approval, it would be precipitous for this court to preclude shareholder ratification if (a) the proposed recapitalization is not void under the Delaware General Corporation Law, or (b) the proxy materials present director action and the background of the proposal fairly and completely.—*Edelman v. Phillips Petroleum Co.*, No. 7899, 10:835.

⊂ 426(2) Ratification and repudiation; authority to ratify or repudiate

1985 Since much of the conduct here under review will be subjected to shareholder approval, it would be precipitous for this court to preclude shareholder ratification if (a) the proposed recapitalization is not void under the Delaware General Corporation Law, or (b) the proxy materials present director action and the background of the proposal fairly and completely.—*Edelman v. Phillips Petroleum Co.*, No. 7899, 10:835.

⊂ 426(7) Ratification and repudiation; by acquiescence or recognition

1984 Plaintiffs with standing to challenge a merger are those who did not vote in favor of the merger and those who did not accept any benefit from the merger.—*Serlick v. Pennzoil Co.*, No. 5986, 10:314.

1984 A plaintiff's tender of shares does not, in and of itself, demonstrate acquiescence in the corporate conduct under attack and a motion to dismiss plaintiff's complaint under such circumstances must fail.—*Id.*

1984 Where a merger is subject to an informed majority of the minority vote, a shareholder who votes in favor of the merger and surrenders his shares thereby acquiesces in the corporate merger.—*Id.*

⇨426(12) Ratification and repudiation; knowledge or notice of facts to support a ratification

1984 A stockholder cannot complain of corporate actions in which, with full knowledge of all the facts, he or she has concurred.—*Serlick v. Pennzoil Co.*, No. 5986, 10:314.

1984 When a stockholder had all pertinent facts relating to an act and concurs in such facts, he is deemed to have acquiesced and cannot complain.—*Wechsler v. Abramowitz*, Nos. 6861 & 6862, 9:833.

⇨473 Making and issue of bonds and certificates —rights and remedies of holders

1982 Where, under the terms of their indenture, debentures can be redeemed at any time, a corporation has no obligation not to redeem debentures in order to preserve conversion rights.—*Lewis v. Fuqua Industries*, No. 6534, 7:478.

⇨482½ Mortgages and trust deeds by corporation —redemption

1976 A corporation may redeem preferred stock out of capital provided the shares so redeemed will be thereafter retired pursuant to 8 DEL. C. § 243 and the capital of the corporation reduced in accordance with 8 DEL. C. § 244. DEL. CODE ANN. tit. 8, § 160(a)(1).—*Baron v. Wolf*, No. 4972, 3:136.

1976 Preferred stock can be redeemed in cash, at "such price or prices, or such rate or rates, and with such adjustments, as shall be stated in the certificate of incorporation or in the resolution . . . providing for the issue of such stock . . . ." DEL. CODE ANN. tit. 8, § 151(b).—*Id.*

1976 The plaintiffs have not demonstrated a probability of ultimate success simiply by showing that what Allied Artists is purporting to do under the authority of 8 DEL. C. §§ 160 and 151(b) in redeeming the stock it could not do under 8 DEL. C. § 170 if it was not redeeming the stock.—*Id.*

⇨499 Capacity to sue and be sued in general

1981 A shareholder may not seek relief for wrongful acts in the name of the corporation where he is barred from personally seeking the same relief in his own name because he acquired his shares with knowledge from those who participated in the wrongful act.—*Darley Liquor Mart, Inc. v. Smith*, No. 5783, 6:411.

1976 Where misuse of information obtained through inspection threatens harm to the corporation, it has a remedy in the courts in an appropriate action.—*Skoglund v. Ormand Industries, Inc.*, No. 5144, 2:359.

⇨502 Jurisdiction

1981 The Delaware Supreme Court has held the director's consent to service of process statute, DEL. CODE ANN. tit. 10, § 3114, is constitutional and, therefore, directors of Delaware corporations are subject to suit in Delaware for alleged breaches of their fiduciary duty.—*Meeker v. Bryant*, No. 6245, 6:388.

1981 Where the relationship between the parties imposes an equitable obligation to account, as in a claim for breach of fiduciary duty, the court of chancery has always taken jurisdiction even if an adequate remedy exists at law.—*Id.*

⇨506 Parties

1981 Indispensable parties are persons whose interest in a controversy is of

such a nature that a final decree cannot be made without affecting that interest.—*Meeker v. Bryant*, No. 6245, 6:388.

1981 Whether a party is an indispensable party must rest on the facts of each case.—*Id.*

1981 Nonresident plaintiffs who are given proper notice under Rule 23(c) as members of a class action are bound by a court's final decision by *res judicata*.—*Id.*

⊂ 518(1) Pleading—issues, proof, and variance

1977 If one chooses to avail himself of the corporate format as a means of doing business, ignorance of his fiduciary responsibilities cannot constitute a defense to the corporate and creditor rights of others involved in the enterprise.—*Holloway v. Sharon Land Co.*, Nos. 5001 & 4717, 3:578.

⊂ 519 Evidence

1976 Where a stockholder seeks inspection of the stock ledger or list of stockholders the burden of proof is placed upon the corporation to establish that such inspection is sought for an improper purpose. DEL. CODE ANN. tit. 8, § 220(c).—*Skoglund v. Ormand Industries, Inc.*, No. 5144, 2:359.

⊂ 519(1) Evidence; presumptions and burden of proof

1964 Despite a prospective vote in favor of proposed merger by the holders of the majority of the independent stock of the offeree corporation (being, however, a minority of all the stock) defendants have burden of proof of showing fairness of the transaction.—*Stryker & Brown v. The Bon Ami Company*, No. 1945; *Gottlieb v. Lestoil Products, Inc.*, No. 1947, 2:157.

⊂ 519(3) Evidence; weight and sufficiency

1981 Before there is any judicially sanctioned interference with the internal affairs of a corporation, there must be a clear showing of fraud or gross mismanagement by corporate officers which threatens to result in direct loss to the corporation and cannot be otherwise prevented.—*Giuricich v. Emtrol Corp.*, No. 6423, 7:313.

⊂ 522 Judgment or decree

1984 The court of chancery is loath to intervene in the internal management of a corporation unless and until a plaintiff can make a case that an exercise of corporate governance, otherwise proper, is used as a tool to frustrate the legitimate rights of its stockholders.—*Huffington v. Enstar Corp.*, No. 7543, 9:185.

1984 The court of chancery will not interfere with a corporate board's postponement of the corporation's annual meeting unless a plaintiff satisfies the burden of showing that an exercise of corporate governance, otherwise proper, is used as a tool to frustrate the legitimate rights of its stockholders.—*Id.*

⊂ 537 What constitutes corporate insolvency

1982 Insolvency may consist of either a deficiency of assets below liabilities with no reasonable prospect that the business can be continued in the face thereof, or it may consist of an inability to meet recurring obligations as they fall due in the usual course of business.—*Siple v. S & K Plumbing & Heating, Inc.*, No. 6731, 7:504.

⊂ 538 Evidence of insolvency

1982 Application for the appointment of a liquidating receiver by a shareholder should be denied absent convincing evidence that the corporation has been unable to meet its existing business obligations, or that corporate assets are outweighed by incurred liabilities.—*Siple v. S & K Plumbing & Heating, Inc.*, No. 6731, 7:504.

1982 Application for the appointment of a liquidating receiver should be denied where there is no basis to conclude that the business will be unable to overcome its difficulties.—*Id.*

⊂ 540 Statutory provisions

1975 Where the Delaware Uniform Conveyance Act is applicable, the definition of insolvency under the

Delaware statutes is likewise applicable. DEL. CODE ANN. tit. 6, § 1302(a).—*Farland v. Wills*, No. 4888; *Bank of America v. GAC Properties, Inc.*, No. 4914, 1:467.

1975 The Delaware statutory definition of insolvency has been said to be broader than both insolvency in the bankruptcy sense (deficit net worth) and insolvency in the equity sense (inability to pay debts as they mature).—*Id.*

⊂ 542(1) Conveyances when insolvent or in contemplation of insolvency—in general; in general

1977 When a transferee acquires corporate assets without providing for payment of the debt, it constitutes fraud upon creditors, as well, and renders transferee liable for value of assets received as to which assets creditor was formerly entitled to look for satisfaction.—*Williams v. Don Yerkes Fine Cars, Inc.*, No. 4777, 4:552.

⊂ 542(3) Conveyances when insolvent or in contemplation of insolvency—in general; transfer to or for benefit of officers or stockholders

1977 When one stands in a fiduciary duty with other shareholders, in view of the insolvency of the corporate entity, preferential payments are a breach of that duty and consequently invalid.—*Holloway v. Sharon Land Co.*, Nos. 5001 & 4717, 3:578.

⊂ 547(4) Remedies of creditors in general; as to fraudulent or preferential transfers

1977 When a transferee acquires corporate assets without providing for payment of the debt, it constitutes fraud upon creditors, as well, and renders transferee liable for value of assets received as to which assets creditor was formerly entitled to look for satisfaction.—*Williams v. Don Yerkes Fine Cars, Inc.*, No. 4777, 4:552.

1977 Equity has jurisdiction over a suit by a creditor to enforce liability on a transferee as a result of a transfer of assets by a transferor corporation which thereby defrauds a creditor of the latter. DEL. CODE ANN. tit. 10, § 342.—*Aloysius, Butler & Clark Associates, Inc. v. First National Retirement Systems, Inc.*, No. 5232, 4:565.

1977 Chancery has jurisdiction over actions commenced pursuant to the Fraudulent Conveyances Act.—*Id.*

⊂ 548(1) Creditors' suits; nature and scope of remedy

1977 Equity has jurisdiction over a suit by a creditor to enforce liability on a transferee as a result of a transfer of assets by a transferor corporation which thereby defrauds a creditor of the latter. DEL. CODE ANN. tit. 10, § 342.—*Aloysius, Butler & Clark Associates, Inc. v. First National Retirement Systems, Inc.*, No. 5232, 4:565.

⊂ 548(3) Creditors' suits; conditions precedent

1977 Equity has jurisdiction over a suit by a creditor to enforce liability on a transferee as a result of a transfer of assets by a transferor corporation which thereby defrauds a creditor of the latter. DEL. CODE ANN. tit. 10, § 342.—*Aloysius, Butler & Clark Associates, Inc. v. First National Retirement Systems, Inc.*, No. 5232, 4:565.

⊂ 549 Injunction

1978 It would merely be another form judicial interference with the affairs of a solvent corporation to regulate the investment of the cash assets of a corporation by injunctive order.—*Voege v. Anderson*, No. 5639, 4:593.

⊂ 551 Appointment of receiver

1981 DEL. CODE ANN., tit. 8, § 226 provides that the court of chancery may appoint a custodian for a corporation in the event that its shareholders are deadlocked and as a result are unable to elect successor

directors.—*Giuricich v. Emtrol Corp.*, No. 6423, 7:313.

1981 A single application for custodial relief may be maintained without any additional relief being sought.—*Id.*

1977 The burden of proving insolvency is upon the plaintiff.—*Keystone Fuel Oil, Inc. v. Del-Way Petroleum, Inc.*, No. 5263, 3:575.

⊂ 552 Appointment of receiver; in general

1981 The appointment by a court of equity of a receiver for a solvent corporation must be exercised only when there is a real imminent danger of material loss that cannot be otherwise prevented.—*Giuricich v. Emtrol Corp.*, No. 6423, 7:313.

1981 Shareholder inability to elect successor directors does not of itself show injury sufficient to warrant the appointment of a custodian.—*Id.*

1978 Even though a corporation has lost a substantial amount of money in previous commodity dealings, when no financial disaster is imminent, a court should be reluctant to involve itself in the day to day operation of a solvent corporation.—*Voege v. Anderson*, No. 5639, 4:593.

1977 The conduct of a majority stockholder is not relevant to the issue of whether a receiver should be appointed.—*In re Townsend Acres, Inc.*, No. 561, 3:573.

1977 A receiver is normally a remedy of an auxiliary nature incidental to primary relief bottomed upon fraud or inequitable conduct under the given circumstances and should not be the sole object of the suit.—*Keystone Fuel Oil, Inc. v. Del-Way Petroleum, Inc.*, No. 5263, 3:575.

⊂ 553 Appointment of receiver—grounds

1975 Under Delaware statute, the Court of Chancery may appoint a provisional director for a close corporation, provided that in the certificate of incorporation the corporation affirmatively elects close corporation status by including a provision limiting the number of shareholders to less than thirty, a transfer restriction warning, and a prohibition of public offerings of the stock of such corporation. DEL. CODE ANN. tit. 8, §§ 341(a), 342, 353.—*Barry v. Full Mold Process, Inc.*, No. 4740, 1:202.

1975 Although Delaware statutes provide for appointment of a custodian or receiver, such appointment on the ground of mismanagement calls for a cautious exercise of the discretion of the court, due to the fact that such form of relief is radical and should be granted grudgingly. DEL. CODE ANN. tit. 8, § 226.—*Id.*

⊂ 553(1) Appointment of receiver—grounds; in general

1984 In order for the Delaware statute authorizing the appointment of a corporate custodian to be applicable, these conditions must exist: (1) the corporation must be threatened with irreparable injury; (2) the division of the directors respecting the management of the corporation must be a direct cause of the malady; and (3) circumstances must be such that the shareholders are unable to terminate this division by vote. DEL. CODE ANN. tit. 8, § 226(a)(2).—*Hoban v. Dardanella Electric Corp.*, No. 7615, 9:470.

1984 A corporation is threatened with irreparable injury when its two directors are so divided respecting the management of the company that the required vote for action necessary to its survival cannot be obtained. DEL. CODE ANN. tit. 8, § 226(a)(2) —*Id.*

1982 The appointment of a liquidating receiver is a type of relief designed to protect the rights of a shareholder of a corporation in case of insolvency. DEL. CODE ANN. tit. 8, § 291.—*Siple v. S & K Plumbing & Heating, Inc.*, No. 6731, 7:504.

1982 Insolvency is the standard by which to measure the application for the appointment of a liquidating

receiver. DEL. CODE ANN. tit. 8, § 291.—*Id.*

1982 In an application for the appointment of a receiver, even if a showing of insolvency is made, the appointment of a liquidating receiver lies in the discretion of the court.—*Id.*

1977 A receiver will never be appointed except under special circumstances of a great exigency and when some beneficial purpose will be served thereby.—*Keystone Fuel Oil, Inc. v. Del-Way Petroleum, Inc.*, No. 5263, 3:575.

1977 Reluctance on the part of the plaintiff to force a public sale of vacant service station properties does not warrant the appointment of a receiver for the sole purpose of liquidating real estate through another means so as to pay off a judgment, especially when there are other factors involved, including active litigation.—*Id.*

1977 If there is doubt as to the actual condition of insolvency, the appointment of a receiver should be denied. *Kramedos v. Kramedos*, No. 518, 3:149.

553(2) Appointment of receiver—grounds; discretion of court

1981 The judicial power to appoint a custodian of a corporation under Delaware law is discretionary. DEL. CODE ANN. tit. 8, § 226(a).—*Giuricich v. Emtrol Corp.*, No. 6423, 7:313.

1977 If insolvency of the corporation is shown, the appointment of a receiver is still within the discretion of the court.—*Kramedos v. Kramedos*, No. 518, 3:149.

1975 The appointment of a receiver is discretionary with court even where a corporation is insolvent, the statute being permissive not mandatory. DEL. CODE ANN. tit. 8, § 5291.—*Farland v. Wills*, No. 4888; *Bank of America v. GAC Properties, Inc.*, No. 4914, 1:467.

⇨553(3) Appointment of receiver—grounds; insolvency and preference of creditors

1977 The appointment of a receiver does not follow automatically even if insolvency is shown.—*Keystone Fuel Oil, Inc. v. Del-Way Petroleum, Inc.*, No. 5263, 3:575.

1977 A receiver must be appointed to wind up the affairs of the corporation when, in addition to the corporation being insolvent, its management is effectively deadlocked.—*Williams v. Don Yerkes Fine Cars, Inc.*, No. 4777, 4:552.

⇨553(4) Appointment of receiver—grounds; assignment for benefits of creditors

1977 An unsecured creditor has the type of interest which should be protected by the appointment of a receiver.—*In re Townsend Acres, Inc.*, No. 561, 3:573.

⇨553(5) Appointment of receiver—grounds; dissensions as to management

1975 A receiver will not be appointed where good faith negotiations to determine the respective rights of two corporations are being pursued, when a corporate deadlock in one of the corporations does not threaten immediate and irreparable loss to that corporation, and where reduced revenues are due to a poor market and not to differences within that deadlocked corporation.—*Barry v. Full Mold Process, Inc.*, No. 4740, 1:202.

1977 Mere differences of opinion between minority and majority stockholders as to the desirability for the corporation to continue business, or the manner in which it is being conducted, will not constitute a legitimate ground for the appointment of a receiver.—*Kramedos v. Kramedos*, No. 518, 3:149.

1977 A receiver must be appointed to wind up the affairs of the corporation when, in addition to the corporation being insolvent, its management is effectively deadlocked.—*Williams v. Don Yerkes Fine Cars, Inc.*, No. 4777, 4:552.

⇨553(6) Appointment of receiver—grounds; maladministration or diversion of assets

1975 Relief is to be granted only where there is a clear showing of fraud or gross mismanagement by corporate officers which threatens to result in a direct loss to the corporation, an injury to the vital interests of the stockholders, and which cannot otherwise be prevented.—*Barry v. Full Mold Process, Inc.*, No. 4740, 1:202.

⊂ 553(8) Appointment of receiver—grounds; misconduct of directors

1975 A custodian or receiver will not be appointed where unexplained telephone calls, automobile expenses, tickets to athletic events, physical examinations, and club dues are not in their aggregate amount of such size as to justify such appointment.—*Barry v. Full Mold Process, Inc.*, No. 4740, 1:202.

⊂ 557(5) Appointment of receiver—proceedings; proof

1978 A stockholder must demonstrate fraud, gross mismanagement, or extreme circumstances causing imminent danger of great loss which cannot otherwise be prevented before a court will appoint a receiver for a solvent corporation.—*Voege v. Anderson*, No. 5639, 4:593.

1977 If there is serious doubt as to the fact of insolvency, the appointment of a receiver should be denied.—*Keystone Fuel Oil, Inc. v. Del-Way Petroleum, Inc.*, No. 5263, 3:575.

⊂ 558 Appointment of receiver—appointment, qualification, and tenure

1984 Where the court allows each of two directors to suggest a different party for consideration as a corporate custodian, only one should be appointed. To do otherwise might set up the possibility that two custodians appointed by the court to run the affairs of the corporation might themselves become deadlocked.—*Hoban v. Dardanella Electric Corp.*, No. 7615, 9:470.

⊂ 560(1) Powers, duties and liabilities of receivers in general; in general

1981 A custodian appointed under section 226(a) is to be endowed with essentially the same powers as a receiver under DEL. CODE ANN. tit. 8, § 291 except that a custodian cannot effectuate a liquidation. DEL. CODE ANN. tit. 8, § 226(a).—*Giuricich v. Emtrol Corp.*, No. 6423, 7:313.

1977 The existence of even one undisclosed asset of an insolvent corporation is sufficient reason to appoint a receiver, since one of the duties of a receiver is to discover undisclosed assets.—*In re Townsend Acres, Inc.*, No. 561, 3:573.

⊂ 560(2) Powers, duties, and liabilities of receivers in general; representing creditors and stockholders

1977 An unsecured creditor has the type of interest which should be protected by the appointment of a receiver.—*In re Townsend Acres, Inc.*, No. 561, 3:573.

⊂ 571 Revival of disused charter or franchise

1980 A certificate for revival of a void corporation does not require consent of all directors, only a majority. DEL. CODE ANN. tit. 8, § 312.—*National Medical Properties, Inc.*, No. 6036, 5:537.

⊂ 573 Agreements for reorganization

1978 The term "recapitalization" has no generally accepted meaning in law or accounting.—*Wood v. Coastal States Gas Corp.*, No. 5696, *Hook v. Wyatt*, No. 5719, 5:326.

1978 "Recapitalization" has a meaning which is dependent on the context in which it is used.—*Id.*

1978 Recapitalization can be defined as a reshuffling of a capital structure within the framework of an existing corporation.—*Id.*

1978 The argument that the restructuring of a corporation, when con-

sidered as a whole, constitutes a recapitalization, even though none of the singular acts would constitute a recapitalization, fails in view of the plain meaning of the language in the certificate of rights.—*Id.*

⇨581 Power to consolidate

1984 There is a great potential for abuse in a leveraged buy-out; by its very nature, it involves the exclusive use of corporate assets to buy out the owners of the corporation.—*Dart v. Kohlberg, Kravis, & Roberts & Co.*, No. 7366, 10:177.

1984 A valid business purpose is not a prerequisite to a cash-out tender offer.—*Fisher v. United Technologies Corp.*, No. 5847, 10:194.

1984 A purported lack of a business purpose is no longer a sufficient reason to challenge a merger.—*Wilen v. Pollution Control Industries, Inc.*, No. 7254, 10:357.

1979 The "entire fairness" or "intrinsic fairness" test is applied in reviewing an attached merger transaction, even though a majority of the minority stockholders approved the merger. —*Schreiber v. Bryan*, No. 4250, 5:381.

1978 In an action where the plaintiffs object to the form of a proxy solicitation relating to a merger, any objection to the substance of the disclosure is without merit in the absence of any showing that the prospectus and proxy statement contained false or misleading information and that the prospectus and proxy statement did not disclose with complete candor the facts necessary for the stockholders to consider the merger offer.—*Sarabyn v. Jessco, Inc.*, No. 607, 4:610.

1975 There is no automatic rule of law that a merger cannot occur if its purpose is to serve the interest of a majority shareholder.—*Tanzer v. International General Industries, Inc.*, No. 4945, 1:444.

⇨582 Agreements for consolidation

1985 In an action for preliminary injunction of the consummation of a plan of merger, since it is not claimed that the defendant directors, with the exception of four individuals, acted out of self interest the usual burden of proving unfairness rests upon the party attacking the merger.—*Repairman's Service Corp. v. Nat'l Intergroup, Inc.*, No. 7811, 10:902.

1985 In measuring the conduct of the defendant corporation's directors, the force of the business judgment rule applies with the concomitant requirement that director liability be established through proof of gross negligence.—*Id.*

1985 With respect to a merger in which a shareholder would exchange his investment for one in a different entity, full disclosure would encompass all information that a reasonable shareholder would consider important in deciding whether to alter his investment at the stated exchange ratio.—*Id.*

1985 In an action for preliminary injunction of the consummation of a plan of merger which would require plaintiff shareholder to exchange existing shareholdings for shares in the newly formed corporation, the wisdom or economic feasibility of the exchange is not a matter of judicial review.—*Id.*

1985 Where plaintiff's complaint alleges misrepresentation and concealment in proxy material, it is the limited duty of the court to assure that all material facts are disclosed in accordance with the directors' fiduciary obligation.—*Id.*

1985 In the case of a tender offer or cash-out merger, the benefit to shareholders can be measured strictly in terms of a specific premium.—*Id.*

1985 Where plaintiff's complaint alleges misrepresentation and concealment in proxy material, the defendant's failure to disclose its primary reliance on market value in determining the exchange ratio is not a material nondisclosure.—*Id.*

1985 Where plaintiff's complaint alleges misrepresentation and concealment in proxy material, generally, soft

information, such as projections and estimates as to value, need not be disclosed due to their lack of reliability.—*Id.*

1985 Where arm's-length negotiation has resulted in an agreement which fully expresses the terms essential to an understanding by shareholders of the impact of the merger, it is not necessary to describe, in proxy materials, all the bends and turns in the road which led to that result.—*Id.*

1983 A dilution of dividends and earnings on a *pro forma* basis is insufficient to establish that the terms of the merger were unfair to minority-shareholders where the party standing on both sides of the transaction has come forward with evidence to establish the entire fairness of the transaction.—*Rosenblatt v. Getty Oil Co.*, No. 5278, 8:366.

1983 A corporate board of directors does not have an absolute duty to bargain at arms' length in establishing asset values during merger negotiations. The board may rely on an honest and independent appraisal.—*Id.*

1983 An energy corporation's board of directors does not violate its statutory obligation to manage corporate affairs when, as part of the process to establish an exchange ratio for minority shares during merger negotiations, both companies assign an engineering firm the task of valuing their respective subsurface assets. This is true even if both boards agree to be bound by those valuations, although one board did not agree to weigh a particular asset in a particular way, thereby committing itself to any particular exchange ratio. DEL. CODE ANN. tit. 8, § 141(a).—*Id.*

1981 The test for disclosure in a proxy statement is whether defendants disclosed all information in their possession germane to the transaction in issue.—*Fisher v. United Technologies, Corp.*, No. 5847, 6:380.

⊂= 583 Assent of stockholders

1984 In a cash-out merger subject to the approval of a majority of the minority stockholders, a minority stockholder who votes in favor of or accepts the benefit of a merger surrenders standing to be a member of the class of plaintiffs in a class action suit where the sole issue is fairness of the cash-out price.—*Schlossberg v. First Artists Production Co.*, No. 6670, 9:491.

1983 When DEL. CODE ANN. tit. 8, § 228 permits shareholder action to be taken by written consent in lieu of holding a meeting of shareholders, and a majority of the shareholders so approve the concept of a merger and its terms as set forth in an agreement, plaintiff may not invoke DEL. CODE ANN. tit. 8, § 213's requirement that action taken pursuant to which written consent must be consummated within sixty days to require that a new consent be made on whether to go through with the merger. DEL. CODE ANN. tit. 8, §§ 213, 228.—*Carroll v. CM & M Group, Inc.*, No. 7368, 8:565.

1983 DEL. CODE ANN. tit. 8, § 228 is not to be interpreted to mean that no corporate action can be taken pursuant to it unless the transaction so authorized can be finally completed within sixty days of the date of the consent, as there is no such restriction imposed on action taken at a meeting of shareholders, and section 228 authorized a majority of shareholders to act by written consent in lieu of such a meeting. DEL. CODE ANN. tit. 8, § 228.—*Id.*

1981 It is not the purpose of a proxy statement to provide legal advice for those stockholders wishing to oppose a transaction.—*Fisher v. United Technologies Corp.*, No. 5847, 6:380.

1981 Any reasonable stockholder should know that he might not be able to challenge a transaction once he votes for it or accepts its benefits.—*Id.*

1981 It is not a material omission in a proxy statement to assume basic knowledge of investments on the part of the reasonable stockholder.—*Id.*

1981 Failure to confess one's corporate wrongdoing is not a material omission in proxy material.—*Id.*

1981 The inclusion in proxy material of undistorted expert opinion as to the value of a security is not misleading or a misrepresentation.—*Id.*

1981 When there are no patent material misrepresentations or omissions in a proxy statement, the defendant is entitled to summary judgment as a matter of law.—*Id.*

1981 The appraisal statute expressly provides that the appraisal claim is terminated by a withdrawal of the demand for appraisal and acceptance of the merger consideration. DEL. CODE ANN. tit. 8, § 262(i).—*Kahn v. Household Acquisition Corp.*, No. 6293, 7:324.

1981 Where a shareholder attacks a merger based on breach of fiduciairy duty, lack of a proper business purpose and inadequate consideration for shares, the shareholder does not acquiesce to the merger simply by accepting payment for shares at the merger price when such acceptance was done while the suit attacking the merger was pending and being actively pursued by the shareholder.—*Id.*

1981 The provisions of the appraisal statutes should be construed liberally for the shareholder.—*Moffitt v. Wellington Management Co.*, No. 6108, 6:365.

1981 A document designed only to give notice to the defendant corporation is sufficient even though signed by only one of two joint tenants.—*Id.*

1979 The "entire fairness" or "intrinsic fairness" test is applied in reviewing an attached merger transaction, even though a majority of the minority stockholders approved the merger.—*Schreiber v. Bryan*, No. 4250, 5:381.

⇐ 584 Rights and remedies of dissenting stockholders

1985 In an action for preliminary injunction of the consummation of a plan of merger, since it is not claimed that the defendant directors, with the exception of four individuals, acted out of self interest the usual burden of proving unfairness rests upon the party attacking the merger.—*Repairman's Service Corp. v. Nat'l Intergroup, Inc.*, No. 7811, 10:902.

1985 With respect to a merger in which a shareholder would exchange his investment for one in a different entity, full disclosure would encompass all information that a reasonable shareholder would consider important in deciding whether to alter his investment at the stated exchange ratio.—*Id.*

1985 In an action for preliminary injunction of the consummation of a plan of merger which would require plaintiff shareholder to exchange existing shareholdings for shares in the newly formed corporation, the wisdom or economic feasibility of the exchange is not a matter of judicial review.—*Id.*

1985 Where plaintiff's complaint alleges misrepresentation and concealment in proxy material, it is the limited duty of the court to assure that all material facts are disclosed in accordance with the directors' fiduciary obligation.—*Id.*

1985 In the case of a tender offer or cash-out merger, the benefit to shareholders can be measured strictly in terms of a specific premium.—*Id.*

1985 Where plaintiff's complaint alleges misrepresentation and concealment in proxy material, the defendant's failure to disclose its primary reliance on market value in determining the exchange ratio is not a material nondisclosure.—*Id.*

1985 Where arm's-length negotiation has resulted in an agreement which fully expresses the terms essential to an understanding by shareholders of the impact of the merger, it is not necessary to describe, in proxy materials, all the bends and turns in the road which led to that result.—*Id.*

1985 Where plaintiff's complaint alleges misrepresentation and concealment in proxy material, generally, soft information, such as projections and estimates as to value, need not be

disclosed due to their lack of reliability.—*Id.*

1985 A finding that the parent had not dealt fairly with the subsidiary's minority shareholders in a parent-subsidiary cash-out merger is equivalent to a finding that the parent was guilty of misrepresentation in presenting the facts relating to the proposed merger to the subsidiary's minority even if the improper conduct was unintentional.—*Weinberger v. UOP, Inc.*, No. 5642, 10:945.

1985 Upon a finding of unfair dealing on the part of the parent in a parent-subsidiary cash-out merger, the court is free in its discretion to award such damages as it deems appropriate without being limited to a comparison between the price paid to the minority shareholders and the per share value of the subsidiary's stock as of the merger date or some subsequent time.—*Id.*

1985 For the purpose of determining damages to the minority shareholders, the court is required to consider all relevant factors including evidence as to the value of the subsidiary's stock on the date of the merger as well as its value on subsequent dates for the purpose of a possible award based on the concept of rescissionary damages.—*Id.*

1985 Rescissionary damages were inappropriate as a remedy because of the speculative nature of the offered proof where the post-merger value for a share of the subsidiary's stock could not be formulated with reasonable certainty.—*Id.*

1985 The value of the shares acquired from minority shareholders through a cash-out merger is the true and intrinsic value of their stock taken by the merger and not the value that the same stock would have in the hands of the acquiring party by virtue of its becoming the sole owner of the corporation.—*Id.*

1985 Elements of value arising from the accomplishment or expectation of the merger are not to be considered in determining the value of the minority shares in a cash-out merger.—*Id.*

1985 Despite the fact that a damage figure could not be precisely ascertained the minority shareholders were entitled to damages where the parent subsidiary cash-out merger did not meet the standard of fairness to them.—*Id.*

1985 The expanded appraisal remedy may include elements of unfair dealing.—*Weingarden v. Meenan Oil Co.*, Nos. 7291 & 7310, 10:666.

1984 Even if the price may be considered fair, unfair dealing on the part of defendant directors in the manner in which a merger proposal is presented to the shareholders may require consideration by the courts so as to ascertain whether or not the shareholders are entitled to something more.—*Brennan v. Automated Marketing Systems, Inc.*, No. 6745, 10:616.

1984 Under Delaware statute, any documents or information regarding the future value, earning prospects, or future prospects of corporate stock values is relevant and discoverable, provided that the plaintiffs can show that they appear reasonably calculated to lead to the discovery of evidence which would be admissible at trial. DEL. CH. CT. R. 26(b)(1) (1974).—*Cede & Co. v. Technicolor, Inc.*, No. 7129, 10:158.

1984 The remedy available to minority shareholders in a cash-out merger is an appraisal to determine the fair value of their shares, taking into account all relevant factors, excluding any elements of value arising from the speculative accomplishment or expectation of the merger. DEL. CODE ANN. tit. 8, § 262(h).—*Id.*

1984 Dissenting minority shareholders are entitled upon appraisal to be paid the value of their proportionate share in the corporation as a going concern; in determining such value, the court should consider earning prospects and any other factors which were known or which could be ascertained as of

the date of the merger and which throw light on future prospects of the merged corporation.—*Id.*

1984 There is a great potential for abuse in a leveraged buy-out; by its very nature, it involves the exclusive use of corporate assets to buy out the owners of the corporation.—*Dart v. Kohlberg, Kravis, Roberts & Co.*, No. 7366, 10:177.

1984 Where there are no allegations of nondisclosure, plaintiffs' entire fairness claims will be determined in an appraisal proceeding.—*Rabkin v. Philip A. Hunt Chemical Corp.*, No. 7547, 9:800.

1984 Absent fraud, appraisal is the minority stockholders' exclusive remedy.—*Id.*

1984 Where fraud, misrepresentation, self-dealing, deliberate waste of corporate assets or gross and palpable overreaching are involved, an appraisal remedy may not be adequate and traditional remedies remain available.—*Id.*

1984 The basis for a determination of earnings value of stock will normally be the average earnings over the five year period preceding a merger.—*Van De Walle v. Unimation, Inc.*, No. 7046, 10:345.

1984 The fair value appraisal issue with respect to the purchase of minority shares in a cash-out merger must be determined by taking into account all relevant factors, including the elements of rescissory damages if the chancellor considers them susceptible to proof and a remedy appropriate to all the issues of the fairness before him. DEL. CODE ANN. tit. 8, §§ 262(h), 251.—*Weinberger v. UOP, Inc.*, No. 5642, 9:502.

1984 The appraisal remedy may not be adequate in certain cases, particularly where fraud, misrepresentation, self-dealing, deliberate waste of corporate assets, or gross and palpable overreaching are involved. Under such circumstances the chancellor's powers are complete to fashion any form of equitable and monetary relief as may be appropriate, including rescissory damages.—*Id.*

1984 Fair price or fair value includes the element of rescissory damages in the event that the court deems rescissory damages to be an appropriate remedy in a particular case.—*Id.*

1984 Whether or not to grant rescissory damages is an issue which lies in the discretion of the court.—*Id.*

1984 If the wrong does not warrant rescission, then it does not warrant an award of rescissory damages.—*Id.*

1984 The test of entire fairness is comprised of two elements; fair dealing and fair price.—*Id.*

1984 Where a challenge to a merger involves only the alleged inadequacy of the consideration exchanged for the stock, the sole remedy of the dissatisfied shareholder will be a liberal appraisal proceeding pursuant to DEL. CODE ANN. tit. 8, § 262 except where an appraisal would be inadequate. DEL. CODE ANN. tit. 8, § 262.—*Wilen v. Pollution Control Industries, Inc.*, No. 7254, 10:357.

1984 Absent fraud or blatant overreaching, appraisal is the exclusive remedy for stockholders who claim unfairness as to price.—*Id.*

1984 In order for a plaintiff to state a claim for relief other than appraisal, the complaint challenging a merger must allege facts which, if true, would render the appraisal remedy inadequate.—*Id.*

1984 The allegation of a failure to conduct arm's-length negotiations, standing alone, does not state a legally recognizable claim.—*Id.*

1984 If there is a fiduciary obligation resulting from control ownership, then from this status flows an obligation to demonstrate the fairness of any proposed merger transaction.—*Zlotnick v. Newell Cos.*, No. 7246, 9:845.

1983 In mergers where the minority interest is not eliminated but where each minority share is exchanged for an interest in the surviving corporation, the minority shareholders are en-

titled to receive the substantial equivalent in value of what they had before the merger. This standard applies in determining whether the transaction was fair.—*Rosenblatt v. Getty Oil Co.*, No. 5278, 8:366.

1983 A majority shareholder who stands on both sides of a merger has the burden of proving the entire fairness of the transaction to the minority shareholders.—*Id.*

1983 Courts in Delaware will continue to view favorably traditional valuation of corporate assets even though this method is now considered outmoded.—*Id.*

1983 A preliminary injunction is an extraordinary remedy which is only granted in order to prevent truly irreparable injury. Plaintiff bears the burden of proof and must show (1) irreparable injury and (2) reasonable probability of success on the merits.—*Van De Walle v. Unimation, Inc.*, No. 7046, 8:418.

1983 A stockholder has no vested right to continue to hold an equity (stock) interest in a corporation.—*Id.*

1982 In determining the intrinsic value of shares of stock at the time of a merger, an appropriate method is not based on discounting projected cash flows; rather, the present value may be arrived at by such method of valuation fluctuating substantially, depending on the discount rate employed.—*Smith v. Pritzker*, No. 6342, 8:406.

1981 Only those shareholders who vote against a merger or do not turn in their shares for redemption may be eligible to receive damages in an action challenging a merger.—*Fisher v. United Technologies, Corp.*, No. 5847, 6:380.

1981 A majority stockholder owes a fiduciary duty to the minority stockholder.—*Id.*

1981 An unresolved question of fact precludes summary judgment.—*Id.*

1981 An allegation of wrongdoing established a cause of action as to whether a valid business purpose for a merger existed.—*Id.*

1981 A ratification of a merger by a majority of the minority of shareholders shifts the burden of persuasion to the plaintiff to show no bona fide business purpose existed for the merger.—*Id.*

1981 Fraud, misrepresentation, or bad faith by the defendants in the issuance of the consideration given for a merger may constitute a breach of contract.—*Id.*

1981 A merger is not rendered immune from attack merely by requiring the merger must be approved by a majority of the minority shareholders if wrongdoing is alleged.—*Id.*

1981 Although reasonable men may differ as to the value of a corporate security, a showing that a defendant knew the stock offered for consideration in a merger could never reach the claimed value may be a breach of fiduciary duty.—*Id.*

1981 On a motion to dismiss, all allegations in the complaint must be accepted as true.—*Meeker v. Bryant*, No. 6245, 6:388.

1981 Rescission is a remedy which only the court of chancery can grant.—*Id.*

1981 Once equity has acquired jurisdiction, it retains jurisdiction to give final relief to end the controversy.—*Id.*

1981 Jurisdiction of the court is tested by examining the complaint and determining what is actually sought.—*Id.*

1981 A demand for appraisal under section 262, which did not purport to act for both joint tenants, is held to the standard of a demand for payment under section 262 and must be properly and formally signed by or for all stockholders of record.—*Moffitt v. Wellington Management Co.*, No. 6108, 6:365.

1981 Minority preferred stockholders like minority common stockholders have the same right to challenge removal by a cash-out merger for less

than full and fair value.—*Rothchild International Corp. v. Liggett Group, Inc.*, No. 6239, 6:421.

1980 In the absence of a showing of bad faith in an appraisal action, a stockholder should be compensated by being paid an appropriate amount of interest to make up for the loss of the use of his money, notwithstanding the fact that the price offered in the merger proposal may be slightly more than the intrinsic value per share found to exist by the court.—*Tannetics, Inc. v. A.J. Industries, Inc.*, No. 5306, 6:347.

1980 In determining interest to be awarded dissenting stockholders of corporation absorbed in merger, court properly focused on what would have been rate of interest at which prudent investor could have invested money rather than in focusing on how much it would have cost corporation to borrow the money.—*Id.*

1980 The general rule is that in an appraisal action, the resulting corporation is to pay all costs not specifically allocated by statute unless the stockholders seeking the action have evidenced bad faith in its prosecution.—*Id.*

1980 Upon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney's fees and the fees and expenses of experts, to be charged pro rata against the value of all of the shares entitled to an appraisal. DEL. CODE ANN. tit. 8, § 262(h).—*Id.*

1979 Where a defendant owns 62.2% of a corporation's stock and it proposes a transfer to that corporation of its wholly-owned subsidiary, it stands on both sides of the transaction and has the burden of proving the intrinsic fairness of the transaction.—*Cascella v. GDV, Inc.*, No. 5899, 5:519.

1979 A corporate transaction will not be enjoined when there has not yet been shareholder approval and the facts are such that even if the transaction is approved, if later found to be unfair, it can easily be undone.—*Id.*

1979 The "entire fairness" or "intrinsic fairness" test is applied in reviewing an attacked merger transaction, even though a majority of the minority stockholders approved the merger.—*Schreiber v. Bryan*, No. 4250, 5:381.

1979 Under the intrinsic fairness test the burden of showing the entire fairness of a challenged transaction rests with the entity which controls the corporation.—*Id.*

1979 The valuation of stock on a going concern basis is the ultimate objective of an appraisal proceeding. Consideration is to be given to the net asset value of the stock involved. DEL. CODE ANN. tit. 8, § 262.—*Tannetics, Inc. v. A.J. Industries, Inc.*, No. 5306, 5:337.

1979 Net asset value is the equivalent of theoretical liquidation value, in other words, the value of corporate assets on the basis of a fair market value as of the date of merger. DEL. CODE ANN. tit. 8, § 262.—*Id.*

1979 In an appraisal action, the fair market value of corporate assets constitutes the value of the total of its physical assets as distinguished from the value of the business itself, namely it is going concern value. DEL. CODE ANN. tit. 8, § 262.—*Id.*

1979 In an appraisal action, government contracts and patents are capable of estimation for net asset valuation purposes. DEL. CODE ANN. tit. 8, § 262.—*Id.*

1979 A fairly significant weight must be assigned to net asset valuation in determining intrinsic stock value where a conglomerate with wholly owned subsidiaries is being valued in an appraisal action. DEL. CODE ANN. tit. 8, § 262.—*Id.*

1979 The average stock earnings for appraisal purposes are to be determined by averaging the corporation's earnings over a reasonable period of

time. This determination is based upon historical earnings rather than prospective earnings, and the customary period of time over which to compute such average is ordinarily fixed at the five-year period immediately preceding the merger. DEL. CODE ANN. tit. 8, § 262.—*Id.*

1979 In an appraisal action where an average earnings per share valuation is made, the number of years over which the average is taken is normally five. However, the period may be shortened or expanded when appropriate, but only in the most unusual situations. DEL. CODE ANN. tit. 8, § 262.—*Id.*

1979 In an appraisal action the market price for stock subject to an appraisal is that which existed immediately prior to the formal announcement of an intention to merge. That price is the closing price for the stock on the day before the announcement. DEL. CODE ANN. tit. 8, § 262.—*Id.*

1979 In an appraisal action where the market value of a stock is being weighed to determine intrinsic value of the stock, the reliability of the market price is a factor to be considered. DEL. CODE ANN. tit. 8, § 262.—*Id.*

1979 When the market value of stock is being weighed to determine the intrinsic value of the shares, the overall reliability of the market price may be questioned and a low percentage value assigned to it if the corporation is a conglomerate whose shares are not easily susceptible to valuation by the market and the stocks have been traded at low market prices. DEL. CODE ANN. tit. 8, § 262.—*Id.*

1979 In an action challenging the fairness of a corporate merger, under Delaware law, it is sufficient to state a cause of action and require a fairness hearing if the plaintiff alleges the defendants have violated their affirmative fiduciary duty by not opposing a merger which had no business purpose and which eliminated the minority at a grossly inadequate price.—*Weinberger v. UOP, Inc.*, No. 5642, 5:166.

1979 In an action challenging the fairness of a corporate merger under Delaware law, a class action suit is comprised of all minority shareholders of the corporation as of the effective date of the merger which eliminated their equity interests in the corporation, regardless of when or under what circumstances the members of the minority acquired their holdings.—*Id.*

1979 In a class action challenging the fairness of a corporate merger, where the merger agreement was structured so that it could not be approved unless it received the favorable vote of a majority of the 49.5% minority shares, the class sought to be certified should consist only of those former shareholders of the corporation who are not disputed by the majority shareholders as constituting a proper class, namely, those former shareholders of the corporation who voted against the merger and/or have not turned in their stock certificates in exchange for a per share payment, as provided by the merger agreement.—*Id.*

1979 Where one corporation has been merged into another corporation, the corporation which was merged no longer legally exists and cannot be served with process by means of service upon the Secretary of State. DEL. CODE ANN. tit. 8, § 321(b).—*Weinberger v. UOP, Inc.*, No. 5642, 5:158.

1978 Facts for consideration in affixing a value to stock in an appraisal proceeding are those which were known or which could be ascertained as of the date of the merger, and which throw any light on future prospects of the merged corporation.—*Bell v. Kirby Lumber Corp.*, No. 4706, 4:246.

1978 A claim for appraisal in a corporate merger proceeding will be disallowed when demand was not made on the corporation, although it was timely made on the transfer

agent.—*Carico v. McCrory Corp.*, No. 5160, 4:595.

1978 A claim for appraisal in a corporate merger proceeding will be disallowed when no evidence was tendered that a written demand for payment had been received by the corporation.—*Id.*

1978 A claim for appraisal in a corporate merger proceeding will be disallowed when no further evidence of demand was offered since the last hearing.—*Id.*

1978 A claim for appraisal in a corporate merger proceeding will be disallowed as being the claim of a preferred, rather than a common, stockholder.—*Id.*

1978 A claim for appraisal in a corporate merger proceeding will be disallowed when demand for payment was mailed after the cut-off date, according to the postmark, which was the best evidence of the date of mailing.—*Id.*

1978 A claim for appraisal in a corporate merger proceeding will be disallowed when no evidence was tendered that claimants were record holders of the stock in issue.—*Id.*

1978 A claim for appraisal in a corporate merger proceeding will be disallowed when the claimant's objection did not purport to be made on behalf of the record holder.—*Id.*

1978 A claim for appraisal in a corporate merger proceeding will be disallowed when no demand for payment was made on behalf of the record holder.—*Id.*

1978 A claim for appraisal in a corporate merger proceeding will be disallowed when shares have been sold and no demand was made by the record holder.—*Id.*

1978 A claim for appraisal in a corporate merger proceeding will be disallowed when the objection does not enable the resulting corporation to identify the actual record holder.—*Id.*

1978 A claim for appraisal in a corporate merger proceeding will be disallowed when a proper written objection was not received from or on behalf of the record holder of shares in issue.—*Id.*

1978 A claim for appraisal in a corporate merger proceeding will be disallowed when a person who makes timely objection and/or demand neither knows the name of the record holder nor has disclosed the same to the resulting corporation.—*Id.*

1978 For appraisal purposes, the true or intrinsic value of stock is determined by evaluating all factors and elements which may reasonably have a bearing on value. Market value, asset value, dividends, earnings prospects, the nature of the enterprise, together with other facts known or ascertainable at the time of the merger which relate to the merged corporation's future prospects must be considered by the appraiser in establishing the value of stock. DEL. CODE ANN. tit. 8, §§ 253, 262.—*In re Creole Petroleum Corp.*, No. 4860, 3:606.

1978 Although market price, exclusive of any element of value arising from anticipation or accomplishment of the merger, is usually worthy of great weight in determining dissenting stockholder's appraisal rights, it is not the conclusive factor. DEL. CODE ANN. tit. 8, §§ 253, 262.—*Id.*

1978 Inasmuch as 8 DEL. C. § 262(h) does not fix the interest rate, the matter is one for judicial discretion. DEL. CODE ANN. tit. 8 §§ 253, 262.—*Id.*

1978 The court is not licensed to employ merely an arbitrary presumption in establishing an interest rate. DEL. CODE ANN. tit. 8, §§ 253, 262.—*Id.*

1978 Where market value is not reliable when valuing minority shares in a corporation absorbed in a short-form merger, a reconstructed market value must be considered if one can be formulated. DEL. CODE ANN. tit. 8, §§ 253, 262.—*Id.*

1978 The valuation of stock in appraisal proceedings under DEL. CODE ANN. tit. 8, § 262 is on the basis of the corporation as a going concern. Factors to be considered in arriving at a valuation of earnings include not

only historical earnings, but also the stability of the corporation and the risk factor inherent in such an industry. DEL. CODE ANN. tit. 8, §§ 253, 262.—*Id.*

1978 For short-form merger purposes, Delaware law firmly establishes that earnings value must be based on "historical earnings" rather than "prospective earnings." DEL. CODE ANN. tit. 8, §§ 253, 262.—*Id.*

1978 Average earnings over the five-year period immediately preceding merger are ordinarily used as the basis for determining earnings value of stock. DEL. CODE ANN. tit. 8, §§ 253, 262.—*Id.*

1978 In determining the historical earnings value of shares held by stockholders dissenting from a corporate merger, the impact of unusual profits and losses in different years can be reduced by taking an average of several years. DEL. CODE ANN. tit. 8, §§ 253, 262.—*Id.*

1978 Where historical earnings are neither dependable nor realistic, they must be disregarded in determining value of shares held by dissenting shareholders. DEL. CODE ANN. tit. 8, §§ 253, 262.—*Id.*

1978 Traveling expenses, telephone and telegraph expenses, and office expenses are not to be considered as costs of the appraisal, but instead should be considered the natural burden of an individual involved in litigation. DEL. CODE ANN. tit. 8, §§ 253, 262.—*Id.*

1978 When establishing an interest rate, a useful formula for avoiding arbitrariness is to focus on what rate of interest a prudent investor would have received if the money had been available for him to invest as opposed to how much it would have cost the corporation to borrow such a sum of money. DEL. CODE ANN. tit. 8, §§ 253, 262.—*Id.*

1978 Although no previous cases assigning a weight of 100% to assets was found and a maximum weight of 50% appeared to be preferred, the court would not overturn appraiser's assigning a weight of 100% to assets to be nationalized. DEL. CODE ANN. tit. 8, §§ 253, 262.—*Id.*

1978 The retrospective valuation of assets, which would not be available to generate earnings after nationalization, was correctly excluded from consideration by the appraiser. DEL. CODE ANN. tit. 8, §§ 253, 262.—*Id.*

1978 In determining value, it is facts which were known or could be ascertained as of the date of the merger which are to be considered. DEL. CODE ANN. tit. 8, §§ 253, 262.—*Id.*

1978 In fixing an interest rate, the court's function is to find a rate which fairly compensates stockholders for being deprived of the use of their money for the period from the effective date of the merger to the payment date. DEL. CODE ANN. tit. 8, §§ 253, 262.—*Id.*

1978 Appraiser's determination that a factor should not be given independent weight should not be disturbed upon judicial review unless such determination is arbitrary or unreasonable. DEL. CODE ANN. tit. 8, §§ 253, 262.—*Id.*

1978 A majority stockholder need not sacrifice its own interest in dealing with a subsidiary; but that interest must not be suspect as a subterfuge, the real purpose of which is to rid itself of unwanted minority shareholders in the subsidiary.—*Savin Business Machines Corp. v. Rapifax Corp.*, No. 5331, 4:578.

1978 The right of minority shareholders not to be frozen out of the corporate entity in the absence of a proper corporate purpose does not seem to translate into a corresponding minority right to be frozen into the board of directors where stock ownership interests do not otherwise support it.—*Id.*

1978 Delaware law requires a dissenting stockholder to notify the corporation of his demand for an appraisal before the taking of the vote on a merger in order to enable the corporation to consider the existence of the demands before the merger is approved. DEL. CODE ANN. tit. 8, § 262(b)(1).—*Steinhart v. Southwest Realty*

& Development Co., No. 583, 4:272.

1978 Testimony by a shareholder whose demand for an appraisal was not received by the corporation prior to the taking of a vote on a proposed merger, that he received a proxy statement and that it was mailed on a date more than twenty days prior to the stockholders' meeting in which the vote was taken, precluded him from claiming that timely notice was not sent by the corporation. DEL. CODE ANN. tit. 8, §§ 222(b), 262(b)(1).—*Id.*

1978 In an action seeking an appraisal, where plaintiff shareholder's demand for an appraisal was not received by the defendant corporation because the letter was misdelivered by the United States Postal Service, the plaintiff owned only a minute proportion of the outstanding shares, and an appraisal proceeding was going to be held because a number of other shareholders were entitled to an appraisal, the defendant's failure to prove by a preponderance of the evidence that timely notice of the stockholders' meeting had been sent to plaintiff precluded it from complaining that plaintiff's demand had not been timely received. DEL. CODE ANN. tit. 8, §§ 262(b)(1), 222(b).—*Id.*

1977 Where minority shareholders allege that a proposed merger will, if consummated, destroy the interest of minority shareholders, the court will closely examine the allegation and a temporary restraining order will issue.—*Kemp v. Angel*, No. 5442, 3:587.

1977 Where controlling shareholders stand on both sides of a transaction involving a proposed merger between a parent corporation and its wholly-owned subsidiary, the business judgment rule gives way and the burden of establishing the entire fairness of the proposed merger is placed upon those who stand on both sides of the transaction.—*Lewis v. Great Western Corp.*, No. 5397, 3:583.

1976 The burden is on the person claiming the right to an appraisal to prove that he is a stockholder who has perfected his right to valuation by complying with each of the statutory prerequisites. DEL. CODE ANN. tit. 8, § 262(b).—*In re Engle v. Magnavox Co.*, No. 4896, 4:535.

1976 Only the person appearing on the corporate records or the owner of stock in the corporation may qualify for an appraisal, and the corporation may normally disregard any action taken by someone other than the record owner. DEL. CODE ANN. tit. 8, § 262(b).—*Id.*

1976 A purported letter of objection or demand is void if it is not written by the owner of record. DEL. CODE ANN. tit. 8, § 262(b).—*Id.*

1976 One purpose of the statutory requirement that a stockholder must file written objection to the merger prior to the vote is to give the corporation and its stockholders the opportunity to calculate the maximum number of stockholders who oppose the merger. DEL. CODE ANN. tit. 8, § 262(b).—*Id.*

1976 An objection is filed only when it is actually received by the corporation. DEL. CODE ANN. tit. 8, § 262(b). —*Id.*

1976 Proof that a stockholder mailed his objection prior to the vote is not sufficient to sustain the right of appraisal if the stockholder cannot prove that the written objection was received by the corporation before the vote. DEL. CODE ANN. tit. 8, § 262(b).—*Id.*

1976 The stockholder must make a post-merger written demand for payment of the value of his shares as a prerequisite to an appraisal. DEL. CODE ANN. tit. 8, § 262(b).—*Id.*

1976 The written demand for payment is a separate statutory requirement from the objection filed prior to his vote, and the claim of one who fails to prove that he made such written demand must be dismissed. DEL. CODE ANN. tit. 8, § 262(b).—*Id.*

1976 Since written demand for payment must be made after the merger is effected, a stockholder may not include the demand as a part of the ob-

jection filed before the vote. DEL. CODE ANN. tit. 8, § 262(b).—*Id.*

1976 Written demand for payment must be made within twenty days after the date that the surviving corporation mails notice to objecting stockholders that the merger has become effective, and this requirement has been interpreted to mean that the demand must be placed in the mail within that period. DEL. CODE ANN. tit. 8, § 262(b).—*Id.*

1976 Beneficial owners of shares cannot be parties to an appraisal proceeding if the shares were surrendered for the consideration provided by the terms of the merger by a brokerage house or other record owner. DEL. CODE ANN. tit. 8, § 262(b).—*Id.*

1976 A stockholder who is prevented from making his objections to the merger because of reasons beyond his control is not denied the right to an appraisal, if it is otherwise perfected. DEL. CODE ANN. tit. 8, § 262(b).—*Id.*

1976 A stockholder who has submitted his shares to the corporation and received in exchange the consideration provided for under the terms of the merger cannot thereafter be a party to any appraisal proceedings. DEL. CODE ANN. tit. 8, § 262(b).—*Id.*

1976 A purported letter of objection or demand by a beneficial owner is void. DEL. CODE ANN. tit. 8, § 262(b).—*Id.*

1975 Where the evidence indicates that neither party was dominant, that there was no showing of self-interest or self-dealing, and that the transaction was approved by the directors in the exercise of their informed business judgment, then the burden is on the party attacking the transaction to establish such a disparity in the values exchange as would show a conscious abuse of discretion, a breach of trust, or some other actual or constructive fraud.—*Liboff v. Allen*, No. 2669, 2:350.

1975 Evidence was insufficient to establish under any legal test of fairness a requirement that the subsidiary's public stockholders were entitled to receive a premium payment above the fair value of the stock for the special benefit gained by the parent such as increased borrowing potential and improved cash flow.—*Tanzer v. International General Industries, Inc.*, No. 4945, 1:444.

1975 There may be legitimate interests of subsidiary corporations and minority shareholders which can outweigh even the fairest price.—*Id.*

⇨ 585 Proceedings for consolidation

1985 Under the doctrine of independent legal significance, this two-phased transaction appears sustainable.—*Edelman v. Phillips Petroleum Co.*, No. 7899, 10:835.

1983 Allegations of self-dealing and breach of fiduciary duties by the board and majority stockholder place the burden of proving fairness of the transactions upon the corporate officials.—*Victory Group, Ltd. v. Cindy's Inc.*, No. 7042, 8:424.

1981 In an action seeking to enjoin a corporate merger, where there is no indication that the cash-out price was in any way negotiated or established through the efforts of anyone representing the interests of the minority shareholders, the individual defendants, as controlling shareholders have the burden of proving that the transaction is fair to the minority.—*Roizen v. Multivest, Inc.*, No. 6535, 7:214.

1981 In determining whether an applicant for a preliminary injunction will suffer irreparable injury if the preliminary injunction is denied, the court must also consider potential hardship to the parties enjoined.—*Id.*

1976 The mere fact that the result of actions taken under one section may be the same as the result of action taken under another section does not require that the legality of the result must be tested by the requirements of the second section.—*Baron v. Wolf*, No. 4972, 3:136.

⇨ 586 Status of original and consolidated corporations

1979 Where one corporation has been merged into another corporation, the corporation which was merged no longer legally exists and cannot be served with process by means of service upon the Secretary of State. DEL. CODE ANN. tit. 8, § 321(b).—*Weinberger v. UOP, Inc.*, No. 5642, 5:158.

1964 While, ordinarily, an attempt to arrive at a meaningful projection of earnings requires an examination of past earnings, where the parties disagree as to the comparative figures which result from the application of practically every relevant principle usually employed in determining the value of corporate stock, certain factors make the use of past earnings an unsatisfactory basis for capitalizing the value of the respective shares of stock.—*Stryker & Brown v. The Bon Ami Company*, No. 1945; *Gottlieb v. Lestoil Products, Inc.*, No. 1947, 2:157.

1964 Where offeree corporation reports a loss for one year that results from a unique expenditure and if one were to assume that the sales of offeree corporation would remain near the present level and that the capitalization rate for both offeree and offeror corporations would be similar, then proposed exchange ratio based on earnings valuation would be fair.—*Id.*

1964 If savings of $600,000.00 result from measures already taken by offeree's management and such savings is added to income, then fairness of proposed exchange ratio is open to serious question.—*Id.*

⇨ 589 Succession to rights of original corporations

1984 Where a merger during the pendency of a derivative suit creates a new and different enterprise, the derivative suit no longer belongs to the old company, but to new corporate entity, which alone has standing to pursue it. DEL. CODE ANN. tit. 8, § 259(2) (1953); DEL. CH. CT. R. 23.1.—*Bonime v. Biaggini*, No. 6925; *Mayer v. Biaggini*, No. 6980, 10:610.

1982 Under Delaware law, where a derivative action has been commenced by shareholders of a corporation which is subsequently merged into another corporation, causing the shares of those shareholders to be relinquished, the shareholders will lose their standing to maintain the derivative action.—*Lewis v. Anderson*, No. 6505, 8:351.

1982 Where there is a pending derivative claim on behalf of a corporation which is subsequently merged into another corporation, the derivative claim, if valid, is an asset of the merged corporation which by operation of law passes to and becomes an asset of the surviving corporation.—*Id.*

1982 Since the right to a derivative cause of action passes to the surviving corporation by virtue of a merger, the former shareholders of the company that have ceased to exist as a result of the merger cannot maintain a derivative action on behalf of their former corporation.—*Id.*

1982 The right to a pending cause of action is an asset of a merged corporation which passes to the corporation surviving the merger.—*Id.*

1982 In extreme cases, equitable circumstances may well exist which would justify permitting a shareholder plaintiff in a derivative suit to continue a pending action in his own right despite technical loss of shareholder status resulting from a subsequent merger.—*Id.*

⇨ 591 Actions by or against consolidated corporations

1984 An issue of fact as to whether defendants knew, at the time of the merger proposal, that the value of convertible shares could never reach the stated amount in the foreseeable future is sufficient to withstand a motion for summary judgment.—*Fisher v. United Technologies, Corp.*, No. 5847, 10:194.

1984 In a cash-out merger subject to

the approval of a majority of the minority stockholders, a minority stockholder who votes in favor of or accepts the benefit of a merger surrenders standing to be a member of the class of plaintiffs in a class action suit where the sole issue is fairness of the cash-out price.—*Schlossberg v. First Artists Production Co.*, No. 6670, 9:491.

1981 Fraud, misrepresentation, or bad faith by the defendants in the issuance of the consideration given for a merger may constitute a breach of contract.—*Fisher v. United Technologies Corp.*, No. 5847, 6:380.

1979 Where one corporation has been merged into another corporation, the corporation which was merged no longer legally exists and cannot be served with process by means of service upon the Secretary of State. DEL. CODE ANN. tit. 8, § 321(b).—*Weinberger v. UOP, Inc.*, No. 5642, 5:158.

1979 In a class action challenging the fairness of a corporate merger, where the merger agreement was structured so that it could not be approved unless it received the favorable vote of a majority of the 49.5% minority shares, the class sought to be certified should consist only of those former shareholders of the corporation who are not disputed by the majority shareholders as constituting a proper class, namely, those former shareholders of the corporation who voted against the merger and/or have not turned in their stock certificates in exchange for a per share payment, as provided by the merger agreement.—*Weinberger v. UOP, Inc.*, No. 5642, 5:166.

1979 In an action challenging the fairness of a corporate merger under Delaware law, a class action suit is comprised of all minority shareholders of the corporation as of the effective date of the merger which eliminated their equity interests in the corporation, regardless of when or under what circumstances the members of the minority acquired their holdings.—*Id.*

⊂⊃ 618 Continuance of corporation for purpose of winding up

1975 A dissolved corporation may still serve as a repository of title under a conveyance creating a possibility of reverter.—*In re Milford Athletic Association, Inc.*, No. 487, 1:166.

⊂⊃ 619 Officers or other trustees for purpose of winding up

1978 Since the relationship which existed between the dissolution trustee and the former shareholders of the corporation was of the nature of a trust, trust law and accounting principles would govern the resolution of the issues to be decided.—*Cannon v. Denver Tramway*, No. 3837, 4:276.

1978 In an action to allocate interest received by a dissolution trust, that portion of the interest earned on a condemnation award which accrued after the creation of the trust was allocable to income, since sufficient funds were available to satisfy all creditors as well as the liquidation preferences of the preferred shareholders; interest earned on property belonging to the preferred shareholders should be treated as income.—*Id.*

1978 Court has the discretionary power to allow payment of attorney's fees out of trust property, but only if the conduct of the applicant has been reasonable and of benefit to the trust estate.—*Id.*

1978 Litigation expenses incurred in a cause of action which generates both corpus and income to a trust should be apportioned between corpus and income respectively.—*Id.*

1978 Attorney's fees incurred in litigation concerned with the allocation or apportionment of two items of interest owed to a dissolution trust, which resulted in an apportionment of the interest between income and corpus, should be apportioned accordingly between them.—*Id.*

1978 In an action to allocate expenditures made on behalf of a dissolution trust, the expenses incurred in settling tort claims against the defunct corporation were chargeable to corpus only, since the settlement of claims against trust property is, for trust accounting purposes, generally treated as an extraordinary expense, payable out of principle.—*Id.*

1975 Corporate life does not become extinct by dissolution; rather, a receiver may be appointed at any time when cause therefore appears.—*In re Milford Athletic Association, Inc.*, No. 487, 1:166.

1975 By statute, the court appointed receiver has the power, pursuant to court approval, to perform acts necessary for the final settlement of the unfinished business of the corporation. DEL. CODE ANN. tit. 8, §§ 279, 281.—*Id.*

⇐ 621(1) Appointment of receiver; right or authority to appoint

1980 Payment of overdue franchise taxes with the purpose of reviving a corporation for immediate liquidation is not in certain circumstances a waste of corporate assets. DEL. CODE ANN. tit. 8, § 279.—*National Medical Properties, Inc.*, No. 6036, 5:537.

⇐ 622 Powers, duties, and liabilities of receivers in general

1981 A custodian appointed under section 226(a) is to be endowed with essentially the same powers as a receiver under DEL. CODE ANN. tit. 8, § 291 except that a custodian cannot effectuate a liquidation. DEL. CODE ANN. tit. 8, § 226(a).—*Giuricich v. Emtrol Corp.*, No. 6423, 7:313.

⇐ 629 Distribution among stockholders

1978 Since the relationship which existed between the dissolution trustee and the former shareholders of the corporation was of the nature of a trust, trust law and accounting principles would govern the resolution of the issues to be decided.—*Cannon v. Denver Tramway*, No. 3837, 4:276.

1978 Attorney's fees incurred in litigation concerned with the allocation or apportionment of two items of interest owed to a dissolution trust, which resulted in an apportionment of the interest between income and corpus, should be apportioned accordingly between them.—*Id.*

1978 In an action to allocate interest received by a dissolution trust, that portion of the interest earned on a condemnation award which accrued prior to the creation of the trust was allocable directly to corpus.—*Id.*

1978 In an action to allocate interest received by a dissolution trust, that portion of the interest earned on a condemnation award which accrued after the creation of the trust was allocable to income, since sufficient funds were available to satisfy all creditors as well as the liquidation preferences of the preferred shareholders; interest earned on property belonging to the preferred shareholders should be treated as income.—*Id.*

1978 In an action to allocate interest received by a dissolution trust, interest on funds owed to the trust which had been deposited with the court was directly allocable to income.—*Id.*

1978 Litigation expenses incurred in a cause of action which generates both corpus and income to a trust should be apportioned between corpus and income respectively.—*Id.*

1978 In an action to allocate expenditures made on behalf of a dissolution trust, the expenses incurred in settling tort claims against the defunct corporation were chargeable to corpus only, since the settlement of claims against trust property is, for trust accounting purposes, generally treated as an extraordinary expense, payable out of principle.—*Id.*

⇐ 641 Special statutory provisions

1977 A foreign corporation, not doing business in Delaware, does not come within the transacting of business provisions of DEL. CODE ANN. tit. 8, §

382.—*Terry Apartments Associates v. Associated-East Mortgage Co.*, No. 4778, 3:560.

⊂ 642(1) Carrying on business within state; in general

1981 The measuring standard of minimum contacts is inapplicable for the purpose of service of process to establish what constitutes conducting general business activities within the forum under DEL. CODE ANN. tit. 8, § 382.—*Rothchild International Corp. v. Liggett Group, Inc.*, No. 6239, 6:421.

1981 The formation of an indirect subsidiary under the corporation laws of the forum state for the purposes of holding and acquiring shares is insufficient activity to constitute generally doing business for purposes of establishing *in personam* jurisdiction.—*Id.*

⊂ 665(1) Actions by or against —jurisdiction; facts and circumstances conferring jurisdiction

1984 Where a nonresident's limited business contacts with the forum do not provide an assertion of personal jurisdiction over him pursuant to long-arm statute, it follows that jurisdiction cannot be sustained under the more restrictive corporate long-arm statute. DEL. CODE ANN. tit. 10, § 3104(c)(4); tit. 8, § 382.—*J. Royal Parker Assoc., Inc. v. Parco Brown & Root, Inc.*, No. 7013, 10:215.

1981 To seek redress for a tort under DEL. CODE ANN. tit. 10, § 3104, the alleged tort must take place in Delaware.—*Meeker v. Bryant*, No. 6245, 6:388.

1981 Only actions which directly involve the foreclosure of a mortgage or the removal of a cloud on title or the like, are actions *in rem.*—*Murray's Enterprises, Inc. v. Lincoln Insurance Co.*, No. 835, 6:376.

1981 The measuring standard of minimum contacts is inapplicable for the purpose of service of process to establish what constitutes conducting general business activities within the forum under DEL. CODE ANN. tit. 8, § 382.—*Rothchild International Corp. v. Liggett Group, Inc.*, No. 6239, 6:422.

1981 The formation of an indirect subsidiary under the corporation laws of the forum state for the purposes of holding and acquiring shares is insufficient activity to constitute generally doing business for purposes of establishing *in personam* jurisdiction.—*Id.*

1981 A plaintiff may not obtain service of process over a foreign corporation for alleged tortious acts committed under the forum state's corporate long-arm statute within the state where the plaintiff is not a resident of the forum state.—*Id.*

1977 An action based on alleged breaches of contract and alleged acts of fraud in connection therewith, seeking specific performance of alleged undertakings to furnish financial backing for plaintiff's project is a transitory action, and as such, one brought *in personam.*—*Terry Apartments Associates v. Associated-East Mortgage Co.*, No. 4778, 3:560.

⊂ 665(2) Actions by or against —jurisdiction; modes of acquiring jurisdiction

1981 When *in personam* jurisdiction based on a long-arm statute is challenged by a motion to dismiss, the plaintiff has the burden to show a basis for long-arm jurisdiction.—*Meeker v. Bryant*, No. 6245, 6:388.

1981 The purpose of the Delaware long-arm statute is to afford residents a means of redress against persons not subject to personal service in the state. DEL. CODE ANN. tit. 10, § 3104.—*Id.*

⊂ 665(4) Actions by or against —jurisdiction; objections to jurisdiction

1981 The single fact of statutory situs of stock under DEL. CODE ANN. tit. 8, § 169 does not give Delaware sufficient contact with parties to satisfy constitutional standards of minimum contact.—*Meeker v. Bryant*, No. 6245, 6:388.

1981 The mere causing to be filed of an amendment to a Certificate of Incorporation of a Delaware corporation does not constitute "doing business" in the state.—*Id.*

⇨ 672 Actions by or against —pleading

1981 On a motion to dismiss, all allegations in the complaint must be accepted as true.—*Meeker v. Bryant*, No. 6245, 6:388.

COSTS

I. NATURE, GROUNDS, AND EXTENT OF RIGHT IN GENERAL, ⇨ 1-77.

II. PERSONS ENTITLED, ⇨ 78-91.

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⇨ 13 Discretion of court—in equity

1979 Because the employee should have paid for property of his employer that he used when not acting within the scope of his employment, the court has the discretion to assess costs against him.—*Science Accessories Corp. v. American Research & Development*, No. 4324, 5:523.

⇨ 56 In equity

1982 When a party or its counsel petitions a court of equity for an allowance of counsel fees, full disclosure is a prerequisite to any allowance of such fees.—*Loretto Literary & Benevolent Institution v. Blue Diamond Coal Co.*, No. 5980, 8:362.

⇨ 164(1) Allowances additional to costs—right and grounds in general; in general

1982 In ascertaining counsel fees, a court of equity will consider the amount of time and effort applied to a case; the relative complexities of the litigation; and the skills of counsel applied to its resolution.—*Loretto Literary & Benevolent Institution v. Blue Diamond Coal Co.*, No. 5980, 8:362.

⇨ 172 Attorney's fees—in general

1984 A claim is "meritorious" within the rule authorizing attorneys fees in a derivative action if the claim can withstand a motion to dismiss on the pleadings and if the plaintiff possesses knowledge of provable facts which hold some reasonable likelihood of ultimate success.—*Weinberger v. Nelson*, No. 7256, 10:352.

1982 Upon a petition to a court of equity for an award of counsel fees, the decision to award such fees and the determination of the amount thereof is a matter peculiarly address-

ed to the sound discretion of the court.—*Loretto Literary & Benevolent Institution v. Blue Diamond Coal Co.*, No. 5980, 8:362.

1982 Where counsel has represented minority shareholders and obtained a preliminary injunction in favor of the minority, the award of counsel fees is a matter left to the discretion of the court, The chancellor decides what further evidence and testimony is required based upon the facts of the specific case and abuse of discretion is the ultimate test upon review.—*Roizen v. Multivest, Inc.*, No. 6535, 7:502.

1979 The award of legal fees in a derivative action is a discretionary act.—*Telvest, Inc. v. Olson*, No. 5798, 5:378.

1979 A monetary recovery by the corporation is not necessary to support the award of counsel fees so long as the litigation confers some benefit on the corporation.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:367.

1979 The proposition that a monetary recovery is not necessary to support the award of counsel fees so long as the litigation confers some benefit on the corporation applies to settlements as well as to final adjudications.—*Id.*

1979 Where long-term benefits of a prophylactic relief and the elimination of a disruptive minority accrues to the corporation and the immediate benefit of convertibility of common stock into marketable debentures accrues to present shareholders, it is not inappropriate to award counsel fees.—*Id.*

⇨ 214 Motion for retaxation

1982 Before making an appropriate computation of counsel fees, it is necessary to determine the reasonable hours spent and a reasonable hourly rate without the use of multiples.—*Loretto Literary & Benevolent Institution v. Blue Diamond Coal Co.*, No. 5980, 8:362.

COURTS

I. NATURE, EXTENT, AND EXERCISE OF JURISDICTION IN GENERAL, ⇨ 1-40.

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   (A) CREATION AND CONSTITUTION, AND COURT OFFICERS, ⇨ 41-60.
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III. COURTS OF GENERAL ORIGINAL JURISDICTION, ⇨ 118-158½.
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(A) GROUNDS OF JURISDICTION IN GENERAL, ⇦ 203-209.
(B) COURTS OF PARTICULAR STATES, ⇦ 210-254.

VII. CONCURRENT AND CONFLICTING JURISDICTION, AND COMITY, ⇦ 472-528.
(A) COURTS OF SAME STATE, AND TRANSFER OF CAUSES, ⇦ 472-488.
(B) STATE COURTS AND UNITED STATES COURTS, ⇦ 489-509.
(C) COURTS OF DIFFERENT STATES OR COUNTRIES, ⇦ 510-517.

⇦ 12(2) Jurisdiction of the person—domicile or residence of party; actions by or against nonresidents

1984 Under the Delaware long-arm statute, a nonresident defendant who transacts business or contracts to supply services within the forum is amenable to personal jurisdiction but will only be held to such jurisdiction if the cause of action which produces liability arises from the substantial contact established. DEL. CODE ANN. tit. 10, § 3104(c)(1), (c)(2).—*J. Royal Parker Assocs., Inc. v. Parco Brown & Root, Inc.*, No. 7013, 10:215.

1984 Incorporation in Delaware does not satisfy the "transacts any business" standard of the Delaware long-arm statute and, therefore, does not subject a nonresident defendant to personal jurisdiction where the act of incorporation is merely an incident to the negotiation and execution of an agreement outside of the state of Delaware. DEL. CODE ANN. tit. 10, § 3104(c)(1).—*Id.*

1984 An agreement to provide for the formation of a holding company in Delaware is not a contract to supply services or things in that state and does not bring the transaction within the purview of the Delaware long-arm statute where the operating companies are out of state and the only contact established by the agreement is the prospect of providing services in Delaware. DEL. CODE ANN. tit. 10, § 3104(c)(2).—*Id.*

1984 Although, pursuant to long-arm statute, a nonresident defendant who regularly does or solicits business in Delaware may be amenable to personal jurisdiction, a continuous course of activity is not established by defendant's infrequent advertising in Delaware, sporadic travel into the forum, and retention of local counsel for the purpose of terminating business activities. DEL. CODE ANN. tit. 10, § 3104(c)(4).—*Id.*

1984 Although receipt of substantial revenues by a nonresident defendant for services rendered provides a basis for personal jurisdiction under Delaware's long-arm statute, such revenues, to come within the statute, must result from a persistent course of activity, must be generated from more than one transaction in the state, and must be received before complaint on the activity is filed. DEL. CODE ANN. tit. 10, § 3104(c)(4).—*Id.*

1982 A motion made by an Ohio corporation to have an action instituted against it dismissed for lack of *in personam* jurisdiction must be granted when the plaintiff is a foreign corporation asserting jurisdiction based upon a statutorily substituted service provision available only to Delaware residents. DEL. CODE ANN. tit. 10, § 3104(c)(4).—*Rhone-Poulenc S.A. v. Morton-Norwich Products, Inc.*, No. 6742, 7:496.

1981 A plaintiff may not obtain service of process over a foreign corporation for alleged tortious acts committed under the forum state's corporate long-arm statute within the state where the plaintiff is not a resident of the forum state.—*Rothchild International Corp. v. Liggett Group, Inc.*, No. 6239, 6:421.

1979 The minimum contacts necessary to justify personal jurisdiction over nonresidents may arise out of a statutory relationship derived from the voluntary and knowing acceptance of a fiduciary position in a corporation existing by virtue of the laws of the forum state.—*Pomerance v. Armstrong*, No. 5613; *Citron v. Morrison-Knudsen Co.*, No. 5634, 5:349.

1979 Where a motion to quash service for lack of personal jurisdiction is heard, under the minimum contacts standard, the interests of the forum state that has statutorily expressed a strong interest in supervising the conduct of officers of legal entities created under its laws, and the interests of the plaintiff in proceeding in that forum outweigh the other essential consideration of whether the quality and nature of the nonresident defendant's activity is such that it is reasonable and fair to require him to conduct his defense in the forum state.—*Id.*

1979 State personal service statute is not rendered unconstitutional because a nonresident Delaware corporation director has never set foot in Delaware or that no act related to the causes of action alleged took place in Delaware. DEL. CODE ANN. tit. 10, § 3114.—*Id.*

⇨ 12(2) Jurisdiction of the person—domicile or residence of party; actions by or against nonresidents

1984 To determine the existence of personal jurisdiction pursuant to the Delaware long-arm statute, the court must decide whether jurisdiction is authorized by statute and whether the defendant's due process rights under the fourteenth amendment would be violated by subjecting it to personal jurisdiction in Delaware. DEL. CODE ANN. tit. 10, § 3104(c) (1974).—*Lord & Burnham Corp. v. Four Seasons Solar Products Corp.*, No. 7319, 9:784.

1984 Regular advertisement of products in Delaware alone is sufficient to invoke personal jurisdiction.—*Id.*

⇨ 12(3) Jurisdiction of the person—domicile or residence of party; actions by or against foregin corporations

1981 A plaintiff may not obtain service of process over a foreign corporation for alleged tortious acts committed under the forum state's corporate long-arm statute within the state where the plaintiff is not a resident of the forum state.—*Rothchild International Corp. v. Liggett Group, Inc.*, No. 6239, 6:421.

1981 To obtain jurisdiction over a foreign corporation under DEL. CODE ANN. tit. 8, § 382, that corporation must generally be doing business within the state and the suit must arise out of a particular business transaction which occurred in the state.—*Id.*

⇨ 14 Jurisdiction of the person—actions between nonresidents and foreign corporations

1981 To obtain jurisdiction over a foreign corporation under DEL. CODE ANN. tit. 8, § 382, that corporation must generally be doing business within the state and the suit must arise out of a particular business transaction which occurred in the state.—*Rothchild*

International Corp. v. Liggett Group, Inc., No. 6239, 6:421.

⇐ 17 Jurisdiction of property or other subject-matter involved—in general

1982 A motion to dismiss for lack of subject matter jurisdiction is properly denied by a court in equity when an action is filed seeking a temporary restraining order or, in the alternative, a declaratory judgment on the grounds that a corporation currently under contract to provide services to plaintiff attempted to sell this ability to perform such performances. DEL. CODE ANN. tit. 10, § 342.—*Rhone-Poulence S.A. v. Morton-Norwich Products, Inc.*, No. 6742, 7:496.

⇐ 28 Discretion of court as to exercise of jurisdiction

1977 Chancery Court Rule 12(d) specifically provides authority for the court to use its discretion in determining the stage in the litigation at which it will decide a motion to dismiss for lack of jurisdiction over the person.—*Science Accessories Corp. v. American Research & Development Corp.*, No. 4324, 3:594.

⇐ 37(1) Waiver of objections; in general

1981 Individual defendant would be held to have waived defenses of lack of jurisdiction and invalid service of process unless it can be demonstrated that he and his counsel were justifiably unaware of United States Supreme Court decision holding that provisions of Delaware sequestration statute were unconstitutionally used to confer *in personam* jurisdiction in Delaware court over nonresident defendant when necessary minimum contacts with Delaware were absent. DEL. CODE ANN. tit. 10, § 366.—*Freedman v. Bloomfield*, No. 3020, *Lewis v. Bloomfield*, No. 2874, 6:353.

1978 The entry of a general appearance does not necessarily waive a constitutional right which does not exist at that time.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:148.

⇐ 37(2) Waiver of objections; time of making objection

1978 A maximum period of twenty days should not always be required in determining whether a motion to dismiss for lack of personal jurisdiction is timely.—*Tuckman v. Aerosonic Corp.*, No. 4094, 5:152.

1978 If defendant had filed his motion to dismiss for lack of personal jurisdiction within twenty-five or thirty days, or if he did not learn of the ruling in *Shaffer v. Heitner* until later, a different result might have occurred.—*Id.*

1978 The circuits are divided as to whether twenty days should always be the period of time for filing a 12(h) motion.—*Id.*

1978 The Third Circuit has adopted a more restrictive view as to whether twenty days should always be the period of time for filing a 12(h) motion.—*Id.*

1978 Twenty days is merely the standard against which the question of timelines of an assertion of a rule 12(h) defense is measured. DEL. CH. CT. R. 12(h).—*Id.*

1978 Even a constitutional defense may be waived.—*Id.*

1978 Eighty-two days is clearly an excessive time in which to file a rule 12(h) motion to dismiss for lack of *in personam* jurisdiction.—*Id.*

1978 A defendant may raise the defense of lack of jurisdiction over the person either by motion before pleading or in the answer.—*Id.*

⇐ 39 Determination of questions of jurisdiction in general

1977 Chancery Court Rule 12(d) specifically provides authority for the court to use its discretion in determining the stage in the litigation at which it will decide a motion to dismiss for lack of jurisdiction over the person.—*Science Accessories Corp. v. American Research & Development Corp.*, No. 4324, 3:594.

1977 The court has power, in every case, to determine if the prerequisites to jurisdiction exist.—*Id.*

1977 Jurisdictional issues are generally properly triable to the court prior to a trial on the merits; however, where the jurisdictional issue cannot be decided without requiring the court to pass upon the ultimate merits of the case, the case should be heard and determined on the merits through regular trial procedure.—*Id.*

⇦ 91(1) Previous decisions as controlling or as precedents—decisions of higher court or court of last resort; highest appellate court

1985 The court of chancery cannot reconsider a decision of the Delaware Supreme Court in ruling on an objection to a derivative and class action compromise settlement since the court of chancery lacks power to overturn it.—*Good v. Texaco, Inc.*, No. 7501, 10:854.

⇦ 489 Exclusive or concurrent jurisdiction

1985 Federal courts have exclusive jurisdiction over alleged federal antitrust violations.—*Tomczak v. Morton Thiokol, Inc.*, No. 7861, 10:921.

⇦ 494 Assumption and exercise of conflicting jurisdiction in general

1983 While judicial economy dictates that a plaintiff seek relief on a claim in but one forum, a plaintiff, because of procedural difficulties, must at times commence a second action in a different jurisdiction stating the same claim in order to preserve his right to receive an adjudication on the merits.—*Eichenberg v. Salomon*, No. 7066, 8:333.

DAMAGES

I. NATURE AND GROUNDS IN GENERAL, ⇦ 1-7.

II. NOMINAL DAMAGES, ⇦ 8-14.

III. GROUNDS AND SUBJECTS OF COMPENSATORY DAMAGES, ⇦ 15-73.
- (A) DIRECT OR REMOTE, CONTINGENT, OR PROSPECTIVE CONSEQUENCES OR LOSSES, ⇦ 15-57.
- (B) AGGRAVATION, MITIGATION, AND REDUCTION OF LOSS, ⇦ 58-65.
- (C) INTEREST, COSTS, AND EXPENSES OF LITIGATION, ⇦ 66-73.

IV. LIQUIDATED DAMAGES AND PENALTIES, ⇦ 74-86.

V. EXEMPLARY DAMAGES, ⇦ 87-94.

VI. MEASURE OF DAMAGES, ⇦ 95-126.
- (A) INJURIES TO THE PERSON, ⇦ 95-102.
- (B) INJURIES TO PROPERTY, ⇦ 103-116.
- (C) BREACH OF CONTRACT, ⇦ 117-126.

VII. INADEQUATE AND EXCESSIVE DAMAGES, ⇦ 127-140.

VIII. PLEADING, EVIDENCE, AND ASSESSMENT, ⇦ 141-228.
- (A) PLEADING, ⇦ 141-162.

(B) EVIDENCE, ⇐ 163-192.
(C) PROCEEDINGS FOR ASSESSMENT, ⇐ 193-224.
(D) COMPUTATION AND AMOUNT, DOUBLE AND TREBLE DAMAGES, AND REMISSION, 225-228.

⇐ 77 Construction of stipulations—intent of parties

1984 The liquidated damage clause in an employment contract is limited to damages for breach of the covenant not to compete. Therefore, it may not relate to damages for deliberate misappropriation of proprietary information.—*Dickinson Medical Group, P.A. v. Foote*, No. 834-K, 9:180.

⇐ 157(6) Issues, proof, and variance—in general; special damages in general

1984 Under common law, allegations of special damages are not required to state a claim for equitable relief.—*Lord & Burnham Corp. v. Four Seasons Solar Products Corp.*, No. 7319, 9:784.

1984 The failure to allege special damages is not fatal to a common law claim for disparagement.—*Id.*

DEPOSITIONS

⇐ 1-111 Inclusive

⇐ 8 Right to take and use depositions in general

1979 For discovery purposes, the defendant's answers concerning what action, if any, he would have taken had he known of the existence of the report regarding the fairness of a corporate merger, were properly allowed under rule 26(b) which provides that discovery may be had "regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." DEL. CH. CT. R. 26(b).—*Weinberger v. UOP, Inc.*, No. 5642, 5:158.

⇐ 9 Discretion of court

1982 The standards for determining the place for discovery are not inflexible and the place of deposition is a matter within the discretion of the court.—*Schreiber v. Carney*, No. 6202, 8:401.

1981 The place of deposition is a matter lying within the discretion of the court.—*Dalton v. American Investment Co.*, No. 6305, 6:406.

1979 The question of admissibility of the deposition of a defendant who was president of one of the defendant corporations in a suit challenging the fairness of a corporate merger, is properly left to the discretion of the trial judge based upon the circumstances then existing.—*Weinberger v. UOP, Inc.*, No. 5642, 5:158.

⇐ 17 Persons whose depositions may be taken

1979 Where the defendant is deposed, not as an epxert, but as the president of one of the defendant corporations and is asked hypothetical questions regarding what his reactions would have been had he read a report concerning the fairness of the merger terms, the questions are properly allowed since they are based on the existence of the report, rather than the accuracy of the report, the reason it was prepared or the identity of the person who prepared it.—*Weinberger v. UOP, Inc.*, No. 5642, 5:158.

⇐ 54 Place of taking

1982 In the absence of a voluntary agreement or unusual circumstances, the deposition of an individual defendant is taken at his residence or place of employment and the deposition of

a corporation, through one of its directors, is taken at the principal place of business of the corporation.—*Schrieber v. Carney*, No. 6202, 8:401.

1982 The standards for determining the place for discovery are not inflexible and the place of deposition is a matter within the discretion of the court.—*Id.*

1981 The deposition of a nonresident defendant is normally taken at his place of residence.—*Dalton v. American Investment Co.*, No. 6305, 6:406.

1981 The deposition of a corporation, through one of its officers, is normally taken at the corporation's principal place of business.—*Id.*

1981 The place of deposition is a matter lying within the discretion of the court.—*Id.*

1981 Absent extenuating facts of hardship, a nonresident defendant may be required to travel at the deposing party's expense to the proximity of the court for deposition purposes where otherwise the overall expenses of the parties would be substantially increased.—*Id.*

⇨ 64(2) Examination of witness—in general; scope of examination

1979 Where the defendant is deposed as a president of one of the defendant corporations in a suit challenging the fairness of merger terms, the defendant's opinion concerning the qualifications expected of one being sought to render an independent opinion as to the fairness of a corporate merger, is properly allowed.—*Weinberger v. UOP, Inc.*, No. 5642, 5:158.

⇨ 64(4) Examination of witness—in general; compelling answer

1981 Where deponent wrongfully refused to answer specific questions, it was within the court's discretion to deny motion to compel to answer where no prejudice resulted.—*Goldman v. Aegis Corp.*, No. 6396, 6:359.

⇨ 66 Examination of witness—objections

1981 At a deposition it was improper for attorney to instruct client to refuse to answer defendant's questions since it is the function of the court to pass on the relevancy of the evidence.—*Goldman v. Aegis Corp.*, No. 6396, 6:359.

⇨ 87 Admissibility in evidence

1979 The question of admissibility of the deposition of a defendant who was president of one of the defendant corporations in a suit challenging the fairness of a corporate merger, is properly left to the discretion of the trial judge based upon the circumstances then existing.—*Weinberger v. UOP, Inc.*, No. 5642, 5:158.

⇨ 88 Admissibility in evidence—in general

1979 In an action to compel discovery, it is not ground for objection that the information sought may be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. DEL. CH. CT. R. 26(b).—*Weinberger v. UOP, Inc.*, No. 5642, 5:158.

1979 The question of admissibility of the deposition of a defendant who was president of one of the defendant corporations in a suit challenging the fairness of a corporate merger, is properly left to the discretion of the trial judge based upon the circumstances then existing.—*Id.*

DISCOVERY

I. IN EQUITY, ⇨ 1-27.

II. UNDER STATUTORY PROVISIONS, ⇨ 28-129.

(A) INTERROGATORIES AND EXAMINATION OF PARTIES AND OF OTHER PERSONS, ⇨ 28-79.
(B) PRODUCTION AND INSPECTION OF WRITINGS AND OF OTHER MATTERS, ⇨ 80-120.
(C) ADMISSIONS ON REQUEST, ⇨ 121-129.

⇨15 Persons from whom discovery may be obtained

1981 A subsidiary by definition does not control the parent corporation and cannot be compelled through the discovery process to produce documents and information in the sole possession of the parent.—*Rothchild International Corp. v. Liggett Group, Inc.*, No. 6239, 6:421.

⇨17 Parties

1979 Additional time for discovery will be denied where party requesting it has had adequate opportunity to review the materials requested and has not utilized the opportunity.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:367.

1979 Discovery is favored and usually is allowed to proceed where the party seeking it specifies areas to be investigated.—*Id.*

⇨20 Retaining bill for relief, for purpose of discovery

1979 Discovery is favored and usually is allowed to proceed where the party seeking it specifies areas to be investigated.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:367.

⇨23 Production and inspection of writings and of other matters

1981 The chancery rule requiring a showing of good cause before the production of documents will be ordered requires that the movant must demonstrate a need beyond relevancy or materiality of the documents and that no other avenue is open to him to obtain discovery. DEL. CH. CT. R. 34.—*Brown v. Rosenberg*, No. 833, 7:470.

⇨28 Nature and scope of remedy

1979 A class action applicant should not be harassed about his past record and experience as a class action representative.—*Weinberger v. United Financial Corp.*, No. 5915, 3:385.

1979 It lacks a certain grace for a plaintiff to seek certification as the representative of a large group of corporate shareholders and, at the same time, to assert a right to stand mute as to his past efforts as a representative plaintiff and his understanding of the duties and obligations expected of him as a result of his experience.—*Id.*

1979 Even if it may prolong the deposition to answer questions about plaintiff's experience and understanding of class and derivative actions, it seems only fair that such questioning be tolerated with a certain benign understanding in view of the gravity of the responsibility to the other members of the class which a class action plaintiff asks to assume.—*Id.*

1979 The area of questioning as to plaintiff's past experience and understanding of class and derivative actions is proper and such questions should be answered, subject to any right to refuse further answers should matters reach a point of harassment.—*Id.*

1977 Where requested depositions of officers and directors did not appear likely to lead to any evidence relevant to the narrow issue of whether plaintiffs had a proper purpose to inspect corporate records, defendant's Motion for a Protective Order will be granted.—*Catalano v. T.W.A.*, No. 5352, 3:589.

⇨32 Right to examination in general

1978 Where there is no longer pending a hearing for preliminary injunctive relief and it is improbable that

there will be a trial in the matter in the near future, the need for expedited discovery no longer exists.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:148.

1978 Application for accelerated discovery must be supported by justification.—*Voege v. Anderson*, No. 5639, 4:593.

⇨ 33 Discretion of court

1983 It can be gleaned from Rule 26 and case law that the value of discovery from parties, as well as from nonparties, of material which may lead to admissible evidence at trial can be outweighed by the showing of an unreasonable burden on the entity from whom the information is sought. DEL. CH. CT. R. 26.—*Van De Walle v. Unimation, Inc.*, No. 7046, 8:623.

1981 Application of discovery rules is subject to the exercise of the court's sound discretion.—*Brown v. Rosenberg*, No. 833, 7:470.

1978 Protective orders lie within the discretion of the court, and each case must turn on its own circumstances.—*Najjar v. Roland International Corp.*, No. 5491, 5:141.

⇨ 37 Grounds and purposes of examination—discovery of facts necessary for pleading

1976 Discovery should not be allowed to permit a plaintiff to establish a different cause of action than that which has been plead.—*Zlotnick v. Rudner*, No. 4775, 3:546.

⇨ 38 Grounds and purposes of examination—discovery of evidence

1979 Inquiry into a plaintiff's past record and experience in class and derivative actions, as well as his understanding of them based thereon, could possibly lead to the discovery of relevant evidence bearing on the question of whether or not he is entitled to certification as the person to represent the class under the allegations contained in the complaint.—*Weinberger v. United Financial Corp.*, No. 5915, 3:385.

1977 Discovery is limited to matters sought which are relevant or which are reasonably calculated to lead to the discovery of admissible evidence.—*Catalano v. T.W.A.*, No. 5352, 3:589.

⇨ 41 Subject-matter of examination—relevancy, materiality, and competency in general

1979 Inquiry into a plaintiff's past record and experience in class and derivative actions, as well as his understanding of them based thereon, could possibly lead to the discovery of relevant evidence bearing on the question of whether or not he is entitled to certification as the person to represent the class under the allegations contained in the complaint.—*Weinberger v. United Financial Corp.*, No. 5915, 3:385.

1979 It lacks a certain grace for a plaintiff to seek certification as the representative of a large group of corporate shareholders and, at the same time, to assert a right to stand mute as to his past efforts as a representative plaintiff and his understanding of the duties and obligations expected of him as a result of his experience.—*Id.*

1979 Even if it may prolong the deposition to answer questions about plaintiff's experience and understanding of class and derivative actions, it seems only fair that such questioning be tolerated with a certain benign understanding in view of the gravity of the responsibility to the other members of the class which a class action plaintiff asks to assume.—*Id.*

1976 The court, in ruling on requests for discovery, should consider the various legal relationships and the sweep of discovery sought as well as the evidentiary showing then made.—*Zlotnick v. Rudner*, No. 4775, 3:546.

1976 Relevance is not to be measured by the precise issue framed by the pleadings, but by the general relevance to the subject matter.—*Id.*

⇨ 42 Subject-matter of examination—confiden-

tial relations and privileged communications

1984 A court must be careful not to encourage taking opposing counsels' depositions because much of the information upon which an attorney may have based his signature may be privileged as attorney-client communications and work product.—*Dart v. Kohlberg, Kravis, Roberts & Co.*, No. 7366, 10:177.

1984 Depositions of opposing counsel, taken purportedly for Rule 11 purposes, may create an abuse in attempting to acquire privileged information and are easily susceptible to being used merely to harass an opponent. DEL. CH. CT. R. 11.—*Id.*

⇨44 Objections to examination

1984 A court should not allow indiscriminate taking of the depositions of counsel, as to do so would be to permit harassment.—*Dart v. Kohlberg, Kravis, Roberts & Co.*, No. 7366, 10:177.

1984 Depositions of opposing counsel, taken purportedly for Rule 11 purposes, may create an abuse in attempting to acquire privileged information and are easily susceptible to being used merely to harass an opponent. DEL. CH. CT. R. 11.—*Id.*

1984 If possible, the resolution of a Rule 11 motion to dismiss should be made on information from sources other than the deposition of counsel. DEL. CH. CT. R. 11.—*Id.*

1984 A court must be careful not to encourage taking opposing counsels' depositions because much of the information upon which an attorney may have based his signature may be privileged as attorney-client communications and work product.—*Id.*

⇨48 Persons not parties in general

1984 An attorney is not immune from being required to give a deposition even when representing a party to the litigation.—*Dart v. Kohlberg, Kravis, Roberts & Co.*, No. 7366, 10:177.

⇨53 Time

1978 There should be no deviation from the normal procedure that depositions shall not be taken until after the expiration of thirty days after the service of a summons except in unusual circumstances where conditions exist that would likely prejudice a party if he is compelled to wait.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:148.

1978 Defendant who undertook discovery prior to the expiration of thirty days after service only because plaintiffs had obtained an order for expedited discovery should not be technically bound by the provisions of rule 30(a)(1), which allows a plaintiff to proceed with depositions prior to the expiration of thirty days after service if defendant has sought discovery, when the reason for the expedited discovery has become moot. DEL. CT. CH. R. 30(a)(1).—*Id.*

⇨80 Nature and scope of remedy

1979 In a motion for production of certain documents, any agreement between the named defendants purporting to bring about the illegal issue of stock without adequate consideration to maintain control in named defendant corporation, giving support for the action taken, or dealing in any way with the factual setting resulting therefrom could certainly lead to the discovery of admissible evidence.—*Jaffe v. Regensberg*, No. 5965, 3:387.

1979 Documents between defendant and others relating in any way to keeping defendant's faction in control of the corporation to the exclusion of plaintiffs would be relevant for discovery purposes.—*Id.*

1979 Discovery is favored and usually is allowed to proceed where the party seeking it specifies areas to be investigated.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:367.

⇨85 Discretion of court

1978 When the plaintiff seeks "all" papers in forty-six categories and the defendant applies for a protective order claiming that compliance would require a great deal of care and attention, that the reply brief is due in

less than one week, and that determination on the only issue which has any possible effect on plaintiff's right to proceed is near, a thirty day stay of discovery is appropriate.—*Najjar v. Roland International Corp.*, No. 5491, 5:141.

1978 Protective orders lie within the discretion of the court, and each case must turn on its own circumstances.—*Id.*

⇨89 Relevancy, materiality, and competency in general

1983 It can be gleaned from Rule 26 and case law that the value of discovery from parties, as well as from nonparties, of material which may lead to admissible evidence at trial can be outweighed by the showing of an unreasonable burden on the entity from whom the information is sought. DEL. CH. CT. R. 26.—*Van De Walle v. Unimation, Inc.*, No. 7046, 8:623.

1979 In a motion for production of certain documents, any agreement between the named defendants purporting to bring about the illegal issue of stock without adequate consideration to maintain control in named defendant corporation, giving support for the action taken, or dealing in any way with the factual setting resulting therefrom could certainly lead to the discovery of admissible evidence.—*Jaffe v. Regensberg*, No. 5965, 3:387.

1979 Documents between defendant and others relating in any way to keeping defendant's faction in control of the corporation to the exclusion of plaintiffs would be relevant for discovery purposes.—*Id.*

⇨90 Writings and matters subject to inspection—confidential relations and privileged communications

1978 The attorney-client privilege is ordinarily available to a corporation even when the corporation is sued derivatively.—*Hollingsworth v. Essence Communications, Inc.*, No. 5312, 4:567.

1978 The purpose of the privilege is to enable prospective litigants to avail themselves of the services of those skilled in the law, without fear of publicity or that their confidences could, without their consent, be disclosed.—*Id.*

⇨93 Objections to inspection

1979 A defendant who is challenging the service of process made upon him and who is not clearly a party defendant, is not obligated to assert a defense or proposed defense.—*Jaffe v. Regensberg*, No. 5965, 5:387.

1979 When a defendant is before the court, his defense will presumably be asserted in the form of an answer to the complaint and at that time all will know the basis for his personal defense.—*Id.*

1979 When the plaintiff seeks "all" papers in forty-six categories and the defendant applies for a protective order claiming that compliance would require a great deal of care and attention, that the reply brief is due in less than one week, and that determination on the only issue which has any possible effect on plaintiff's right to proceed is near, a thirty day stay of discovery is appropriate.—*Najjar v. Roland International Corp.*, No. 5491, 5:141.

⇨95 Persons as against whom inspection may be obtained

1979 A defendant who is challenging the service of process made upon him and who is not clearly a party defendant, is not obligated to assert a defense or proposed defense.—*Jaffe v. Regensberg*, No. 5965, 3:387.

1979 When a defendant is before the court, his defense will presumably be asserted in the form of an answer to the complaint and at that time all will know the basis for his personal defense.—*Id.*

⇨97(3) Application and proceedings thereon, time

1979 Additional time for discovery will be denied where party requesting it has had adequate opportunity to

review the materials requested and has not utilized the opportunity.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:367.

DISMISSAL AND NONSUIT

I. VOLUNTARY, ⇨ 1-43(7).

II. INVOLUNTARY, ⇨ 44-81(10).

⇨ 56 Defects and objections as to parties

1984 Motion to dismiss for failure to join an indispensible party under Chancery Rule 12(b)(7) will be denied where party is subject to service of process and joinder as a third party is feasible. DEL. CH. CT. R. 12(b)(7), 14, 19(a).—*Greater Wilmington Sunday Advertiser, Inc. v. Auto Logic Publications, Inc.*, No. 6760, 10:203.

⇨ 57 Defects and objections as to process

1980 Where jurisdiction is sought by substituted service, statute requires an examination of the cause of action alleged against the nonresident director so as to weigh validity of *in personam* jurisdiction. DEL. CODE ANN. tit. 10, § 3114.—*Jaffe v. Regensberg*, No. 5965, 6:318.

⇨ 58(4) Defects and objections as to pleadings; insufficiency

1984 Motion to dismiss for failure to join an indispensable party under Chancery Rule 12(b)(7) may be asserted as part of, or in lieu of, an answer, and motion for default judgment based on insufficiency of motion to dismiss as an answer will be denied. DEL. CH. CT. R. 12(b)(7), 19(a).—*Greater Wilmington Sunday Advertiser, Inc. v. Auto Logic Publications, Inc.*, No. 6760, 10:203.

⇨ 60(1) Want of prosecution; in general

1981 Basic purpose of a dismissal for want of prosecution is to goad a recalcitrant plaintiff into action and should not be a means of arbitrarily dismissing a pending action. Superior Court Rules, Civil Rule 41(e).—*Freedman v. Bloomfield*, No. 3020, *Lewis v. Bloomfield*, No. 2874, 6:353.

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XI. BILL OF REVIEW, ⇨ 442-466.

⇨ 1 Nature and source of jurisdiction

1984 "Equitable jurisdiction" merely means a court of chancery ought not act if such jurisdiction is lacking and not that it has no power to act.—*Mandell v. Stromberg*, No. 1018, 10:636.

1984 Whether or not equitable jurisdiction exists is to be determined by an examination of the allegations in the complaint viewed in the light of what plaintiff really seeks to gain by bringing his cause of action.—*Scari v. Scari's Delivery Service, Inc.*, No. 7552, 10:642.

1982 Where a plaintiff has no standing to bring an action in equity, he may not be availed by the fact that others have been injured by the defendants' wrongdoing.—*Brown v. Automated Marketing Systems, Inc.*, No. 6715, 7:466.

1978 It is inequitable to allow defendants summarily to benefit from certain portions of a possibly unlawful agreement and then to permit them to rely on such illegality as a defense once it had become financially expedient for them so to do.—*Wilmington Trust v. Lee*, Nos. 4000, 4241 & 4924, 4:572.

⇨ 10 Fraud

1977 Equity has jurisdiction over a suit by a creditor to enforce liability on a transferee as a result of a transfer of assets by a transferor corporation which thereby defrauds a creditor of the latter. DEL. CODE ANN. tit. 10, § 342.—*Aloysius, Butler & Clark Associates, Inc. v. First National Retirement Systems, Inc.*, No. 5253, 4:565.

1977 The right of defrauded creditors to proceed in chancery does not de-

pend on the Fraudulent Conveyances Act.—*Id.*

1977 Chancery has jurisdiction over actions commenced pursuant to the Fraudulent Conveyances Act.—*Id.*

1975 Where an Indenture contract provides for repayment as its prime obligation, it should not be read to contemplate the wrongful elimination of one corporation's liquidity at the expense of the debenture holders on the part of a company owing the other corporations.—*Farland v. Wills*, No. 4888; *Bank of America v. GAC Properties, Inc.*, No. 4914, 1:467.

⊂ 15 Subjects of jurisdiction in general

1977 Equity has jurisdiction over a suit by a creditor to enforce liability on a transferee as a result of a transfer of assets by a transferor corporation which thereby defrauds a creditor of the latter. DEL. CODE ANN. tit. 10, § 342.—*Aloysius, Butler & Clark Associates, Inc. v. First National Retirement Systems, Inc.*, No. 5253, 4:565.

1977 Chancery has jurisdiction over actions commenced pursuant to the Fraudulent Conveyances Act.—*Id.*

1977 The right of defrauded creditors to proceed in chancery does not depend on the Fraudulent Conveyances Act.—*Id.*

⊂ 21 Fiduciary rights and obligations

1978 It is within the responsibility of an equity court to scrutinize a corporate act when it is alleged that its purpose violates a fiduciary duty owed to minority stockholders.—*Savin Business Machines Corp. v. Rapifax Corp.*, No. 5331, 4:578.

⊂ 23 Contracts in general

1978 It is inequitable to allow defendants summarily to benefit from certain portions of a possibly unlawful agreement and then to permit them to rely on such illegality as a defense once it had become financially expedient for them so to do.—*Wilmington Trust v. Lee*, Nos. 4000, 4241 & 4924, 4:572.

1971 In equity, unlike at law, time is not generally of the essence unless made so by the contract itself, or from the nature and situation of the subject matter, or by express notice given, requiring the contract to be closed or rescinded at a stated time.—*Tassette, Inc. v. M.A. Gerett, Inc.*, No. 2722, 2:152.

⊂ 25 Illegal contracts, combinations, and transactions

1975 Where the circumstances are such that transactions appear so unconscionable as to require some equitable relief, and where there is in the record a recognized basis for that relief the Court is not narrowly limited to statutory definition.—*Farland v. Wills*, No. 4888; *Bank of America v. GAC Properties, Inc.*, No. 4914, 1:467.

⊂ 39(1) Retention of jurisdiction acquired—complete relief; in general

1984 The court of chancery has broad discretion to tailor remedies to suit the existing situation.—*Andresen v. Bucalo*, No. 6372, 9:149.

1984 In acting upon applications for preliminary injunctions, a court of equity has broad discretionary powers and is to structure a remedy which is fair to all competing interests.—*Joseph v. Shell Oil Co.*, No. 7450, 9:191.

⊂ 39(2) Retention of jurisdiction acquired—complete relief; legal relief in general

1984 Once equitable jurisdiction is established, a purely legal remedy may be applied.—*Mandell v. Stromberg*, No. 1018, 10:636.

⊂ 39(3) Retention of jurisdiction acquired—complete relief; damages

1981 A court of equity is not deprived of jurisdiction in a cash-out merger

context where the complainant seeks only a recovery of money damages on behalf of the members of the injured class.—*Rothchild International Corp. v. Liggett Group, Inc.*, No. 6239, 6:421.

⊂⊃ 43 Existence of remedy at law and effect in general

1984 Chancery is without jurisdiction if there is sufficient remedy at law.—*Braunstein's, Inc. v. Jardel Co.*, No. 7542, 9:763.

1984 The court of chancery has subject matter jurisdiction where the complaint seeks equitable relief for alleged wrongs as to which there is no adequate remedy at law.—*Lord & Burahaam Corp. v. Four Seasons Solar Products Corp.*, No. 7319, 9:784.

⊂⊃ 46 Adequacy of legal remedy—in general

1984 In deciding subject matter jurisdiction, the allegations of the complaint must be examined to determine what plaintiff actually seeks and, based upon that determination, whether plaintiff has an adequate remedy at law.—*Lord & Burnham Corp. v. Four Seasons Solar Products Corp.*, No. 7319, 9:784.

⊂⊃ 54 Application and operation in general

1982 In an action by one seeking to participate in a class action settlement fund, the court must, in determining the eligibility of any claim, be guided by principles of equity consistent with the court's traditional supervisory powers over the administration of settlements.—*Mendich v. Hunt International Resources Corp.*, No. 5912, 7:487.

1978 In an action by plaintiff seeking a current list of stockholders of defendant corporation, it would be an intolerable burden which would violate the basic concept of equity to require the plaintiff to daily file new demands for an updated list and then have to wait five days before filing a new action to obtain each updated list. DEL. CODE ANN. tit. 8, § 220.—*Danco, Inc. v. Contran Corp.*, No. 5638, 4:589.

⊂⊃ 56 Equity regards substance rather than form

1984 A court of equity looks to the substance of a transaction, not to its form, in determining how the parties intended the provisions of an agreement to control the rights granted under it.—*DMG, Inc. v. Aegis Corp.*, No. 7619, 9:437.

⊂⊃ 65(1) He who comes into equity must come with with clean hands; in general

1984 The concept of unclean hands is based on the idea that one who has violated conscience, good faith, or other equitable principles should have the doors of the court of equity closed to him.—*Mandell v. Stromberg*, No. 1018, 10:636.

1984 It is well settled law that when a party who seeks equitable relief has violated conscience or good faith or other equitable principles in his conduct, then the doors of the court of equity should be shut against him.—*E.J. Stephen, Inc. v. Ceccola*, No. 7578, 9:815.

1976 The purpose of the clean hands maxim is to protect the public and the court against misuse by one who, because of his conduct, has forfeited his right to have the court consider his claims, regardless of their merit, and as such it is not a matter of defense, to be applied on behalf of a litigant; rather it is a rule of public policy.—*Skoglund v. Ormand Industries, Inc.*, No. 5144, 2:359.

⊂⊃ 65(3) He who comes into equity must come with clean hands; conduct with respect to different transactions

1984 The defense of unclean hands is available only where the conduct of the plaintiff is directly related to the transaction on which the suit is based and where the alleged conduct of the plaintiff forms a part of the transaction.—*Mandell v. Stromberg*, No. 1018, 10:636.

1976 Where, on the evidence presented, the conduct of plaintiffs is not so shocking to the integrity of the court, the doctrine of clean hands will not be invoked against them.—*Skoglund v. Ormand Industries, Inc.*, No. 5144, 2:359.

⇐ 67 Nature and elements in general

1984 The defense of laches will not warrant dismissal where there is no evidence as to when plaintiffs first became aware of the disparagement nor any evidence that defendant was prejudiced by plaintiff's failure to take action sooner.—*Lord & Burnham Corp. v. Four Seasons Solar Products Corp.*, No. 7319, 9:784.

1984 Laches is an equitable defense, relating to delay after the act is done. It is based on the theory that a person with knowledge of an impending transaction should not be permitted to sit by while positions are detrimentally changed.—*Wechsler v. Abramowitz*, Nos. 6861 & 6862, 9:833.

1984 There are three elements to the defense of laches: (1) full knowledge of the facts; (2) unreasonable delay in the assertion of an available remedy; and (3) intervening prejudice to another.—*Id.*

1975 A former shareholder, who has failed to act for fifteen years, is estopped by laches from asserting an action which would defeat an intended community benefit, which is in keeping with the primary purpose for which the corporation was formed.—*In re Milford Athletic Association, Inc.*, No. 487, 1:166.

⇐ 72(1) Grounds and essentials of bar—prejudice from delay in general; in general

1984 Laches can bar a claim only if there was unreasonable delay which resulted in a change of condition prejudicial to defendant.—*Mandell v. Stromberg*, No. 1018, 10:636.

⇐ 84 Application of doctrine in general

1984 Summary judgment is not granted on the defense of laches; however, it is a factual consideration.—*Wechsler v. Abramowitz*, Nos. 6861 & 6862, 9:833.

⇐ 87(1) Following statute of limitations; in general

1975 Where the statute of limitations bars the legal remedy, it shall bar the equitable in analogous cases or in reference to the same subject matter, when legal and equitable claims so far correspond that the only difference is that one remedy may be enforced in a Court of Law and the other in a Court of Equity. A *fortiori*, where a legal claim is joined in an action in equity under the principle of complete relief, the statute should be applied.—*Tuckman v. Aerosonic Corp.*, No. 4094, 1:463.

⇐ 164 Pleas—in bar of discovery

1978 Orders limiting the sequence or timing of discovery should only be made when and as the convenience of all concerned and the interest of justice require.—*Valley Forge Corp. v. Certainteed Corp.*, No. 5309, 5:145.

1978 An order limiting the sequence or timing of discovery should not be permitted as a means by which one party can win a technical advantage over the other.—*Id.*

1978 In view of the substantial passage of time, since many events in the action occurred several years ago, it is more expedient to go forward with all discovery rather than to delay a portion of it indefinitely.—*Id.*

⇐ 264 Motions relating to pleadings—striking out part of pleading

1984 A claim will not be dismissed for failure to state a claim unless it is reasonably certain that plaintiff would not be entitled to relief under any set of facts which could be proved at trial.—*Lord & Burnham Corp. v. Four Seasons Solar Products Corp.*, No. 7319, 9:784.

⇐ 267 Discretion of court as to amendment

1978 The court has discretion to permit or deny supplementation of the pleadings and has the obligation to brush aside nonprejudicial technical objections which are primarily tactical.—*Gay v. Cordon International Corp.*, No. 5541, 4:264.

⇐ 361 Involuntary dismissal—in general

1983 One of the primary purposes of Court of Chancery Rule 23(e) is the protection of the non-party members of the class from unjust or unfair settlements which affect their rights.—*Botney v. Teledyne, Inc.*, No. 5786, 8:327.

1983 Even though a class has not been certified, Court of Chancery Rule 23(e) is applicable. This rule may be applied at any stage of the proceedings after the commencement of an action purporting to be brought on behalf of a class.—*Id.*

1983 Although dismissal before class certification cannot bind class members before the court, notice before dismissal may be appropriate under some circumstances even beyond class certification if the dismissal is likely to be prejudicial to the interests of the potential class members.—*Id.*

1983 An implicit consideration in determining whether notice of a proposed dismissal should be given under Court of Chancery Rule 23(e), even prior to class certification, is whether plaintiff is acting in a representative capacity.—*Id.*

1983 A plaintiff who brings suit on behalf of a class undertakes to serve as a fiduciary with certain responsibilities. A consequence of such responsibility is that he may not be able to eradicate his representative status by merely moving for dismissal of the action.—*Id.*

1983 Notice to members of the purported class may be necessary under Court of Chancery Rule 23(e) if the rights of the purported class will be jeopardized or prejudiced by the inevitable dismissal of the action.—*Id.*

1983 Before excusing notice under Court of Chancery Rule 23(e), the court must weigh and consider: (1) the likelihood of further stockholder intervention, (2) the probability of any reliance on the knowledge of the pendency of the pending suit, and (3) the presence of any inclination to press for a judicial determination.—*Id.*

1983 A plaintiff's application for predismissal notification to the members of the purported class should be granted where: (1) the plaintiff desires to give notice and is willing to assume the cost of the notice, (2) the complaint alleged that the suit was originally brought on behalf of a proposed class, (3) the lapse of time is likely to bar another suit, and (4) a notice of the pendency of the suit as a class action was sent to all the shareholders of the defendant corporation.—*Id.*

1983 The possibility that the statute of limitations may bar any future prosecution of the suit is not in and of itself determinative of whether notification to class members is required.—*Id.*

1983 Fairness requires that shareholders who were advised of the existence of a proposed class action be informed that the pendency of the suit is about to be terminated unless someone other than the plaintiff is willing to prosecute it, particularly where the plaintiff is willing to bear the cost of the notice, and the statute of limitations will likely bar the commencement of a new suit.—*Id.*

⇐ 362 Involuntary dismissal—grounds

1984 A party, in response to a Rule 11 motion to dismiss, is not required to show good grounds for the challenged pleading but only need show the good faith of the attorney in drafting the complaint. DEL. CH. CT. R.

11.—*Dart v. Kohlberg, Kravis, Roberts & Co.*, No. 7366, 10:177.

1984 If possible, the resolution of a Rule 11 motion to dismiss should be made on information from sources other than the deposition of counsel. DEL. CH. CT. R. 11.—*Id.*

⇦ 371 Separate hearings in same cause

1978 The broad scope of litigation and many affirmative defenses make it difficult to formulate a definitive order clearly separating damages from other issues.—*Valley Forge Corp. v. Certainteed Corp.*, No. 5309, 5:145.

1978 Separate trials on the issues of liability and damages have been authorized and approved where the facts as to those issues are complicated and the issues could be separated without significant prejudice to the parties.—*Id.*

1978 Severance and trial of separate issues is a device which should be used sparingly unless testimony relevant to the separate issue can readily be adduced without spreading out over other issues.—*Id.*

⇦ 372 Setting down cause for hearing

1978 The court has discretion as to when to hold a hearing to determine if a stockholder is to be permitted to inspect the corporation's stock ledger. DEL. CODE ANN. tit. 8, § 220(c).—*Gay v. Cordon International Corp.*, No. 5541, 4:264.

⇦ 378 Submission of issues to jury—issues proper for jury

1980 In a suit by employer for breach of restrictive covenant not to engage in a competitive business, where the damages are clearly unliquidated, it would be appropriate for such damages to be framed for submission to a jury.—*Bunnell Plastics, Inc. v. Gamble*, No. 5913, 6:331.

⇦ 394 Compensation and fees

1982 Upon a petition to a court of equity for an award of counsel fees, the decision to award such fees and the determination of the amount thereof is a matter peculiarly addressed to the sound discretion of the court.—*Loretto Literary & Benevolent Institution v. Blue Diamond Coal Co.*, No. 5980, 8:362.

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⇨56 Acts done or omitted, and change of position

1984 An equitable estoppel arises whenever a party, by his voluntary conduct, has either deliberately or unconsciously led another party in reliance upon that conduct to change his position for the worse.—*Thomas v. Delaware Adolescent Program, Inc.*, No. 684, 9:239.

⇨83(1) Representations—in general; in general

1984 Representation relied upon to operate as an estoppel must be of a nature to lead a man of prudence to take action.—*Thomas v. Delaware Adolescent Program, Inc.*, No. 684, 9:239.

⇨85 Representations—future events

1984 In order to state a claim for promissory estoppel, plaintiffs must allege: (1) the making of a promise; (2) with the intent to induce action or forbearance based on the promise; (3) reliance; and (4) injury.—*Rabkin v. Philip A. Hunt Chemical Corp.*, No. 7547, 9:800.

1984 Estoppel cannot be predicated upon a promise to do that which the promissor is already obliged to do.—*Id.*

⇨90(1) Acquiescence—assent to or ratification of acts of others in general; in general

1984 Acquiescence is based upon the rule that equity will not allow a complainant to stultify himself by complaining about acts in which he participated in or approved of by sharing in the benefits.—*Wechsler v. Abramowitz*, Nos. 6861 & 6862, 9:833.

⇨90(2) Acquiescence—assent to a ratification of acts of others in general; contracts in general

1984 Whenever one party, relying upon conduct of another party, changes his position to his detriment, the person whose conduct has brought the situation about may not impeach the transaction.—*Thomas v. Delaware Adolescent Program, Inc.*, No. 684, 9:239.

⇨103 Remedies

1977 An officer who abdicates his responsibility or acquiesced in the commission of acts is precluded from maintaining a derivative suit.—*Brown v. Fenimore*, No. 4097, 3:552.

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⇨ 43(3) Judicial proceedings and records; records and decisions in other actions or proceedings

1984 Other litigation may warrant disqualification of a plaintiff from bringing a derivative suit where it appears that the derivative plaintiff instituted the derivative suit only as leverage to obtain a favorable settlement in his individual claims against the corporation.—*Scopas Technology Co. v. Lord*, No. 7559, 10:306.

⇨ 53 Nature and scope in general

1975 In a tax suit the presumption of correctness attaching to the Commissioner's assessment will not be allowed to prevail where there is a deficiency in the proof.—*Lasker v. McDonnell & Co., Inc.*, No. 3560, 1:208.

⇨ 73 Corporate acts and records

1977 There exists a presumption that the directors of a corporation act with a bona fide regard for the interests of the corporation. Thus a sale of the assets by the directors is assumed to have been secured on terms and conditions which were expedient and for the corporation's best interest.—*Simkins Industries, Inc. v. Fibreboard Corporation*, No. 5369, 3:144.

1974 Where officers undertake to sell an opportunity back to the corporation to which they owe a fiduciary duty the burden is normally theirs to demonstrate the fairness of the agreement and the presumption of sound business judgment would be unavailable to them.—*Fliegler v. Lawrence*, No. 3647, 1:145.

⇨ 80(1) Laws of other states; in general

1984 In an application for a preliminary injunction where neither party to the action indicates that any other jurisdiction's law on the disputed subject would differ from that of the present forum, the law of the present forum is presumed to be applicable.—*Technicon Data Systems Corp. v. Curtis 1000, Inc.*, No. 7644, 10:322.

⇨ 86 Operation and effect —presumptions of law

1976 Proof that a stockholder mailed his objection prior to the vote is not sufficient to sustain the right of appraisal if the stockholder cannot prove that the written objection was received by the corporation before the vote. DEL. CODE ANN. tit. 8, § 262(b).—*In re Engle v. Magnavox Co.*, No. 4896, 4:535.

1976 There is no presumption that an objection, mailed far enough in advance of the vote so that it ordinarily would be received by the corporation prior to the vote, was in fact actually received before the vote.—*Id.*

⇨ 91 Party asserting or denying existence of facts

1979 Having the burden of producing

evidence of a challenged transaction is not the same as having the burden of proof in an act.—*Schreiber v. Bryan*, No. 4250, 5:381.

⇐ 98 Failure to sustain burden

1984 The court of chancery will not interfere with a corporate board's postponement of the corporation's annual meeting unless a plaintiff satisfies the burden of showing that an exercise of corporate governance, otherwise proper, is used as a tool to frustrate the legitimate rights of its stockholders.—*Huffington v. Enstar Corp.*, No. 7543, 9:185.

1984 The court of chancery is loath to intervene in the internal management of a corporation unless and until a plaintiff can make a case that an exercise of corporate governance, otherwise proper, is used as a tool to frustrate the legitimate rights of its stockholders.—*Id.*

⇐ 113(4) Value or market price of property, corporate stock and bonds

1983 A dilution of dividends and earnings on a *pro forma* basis is insufficient to establish that the terms of the merger were unfair to minority-shareholders where the party standing on both sides of the transaction has come forward with evidence to establish the entire fairness of the transaction.—*Rosenblatt v. Getty Oil Co.*, No. 5278, 8:366.

⇐ 116 Matters explanatory of facts in evidence or of inferences therefrom

1983 While evidence of post-merger events is normally inadmissible by a defendant to prove the fairness of its actions at the time of the merger, documentary evidence placed into the record by the plaintiff which supported defendant's position need not be ignored.—*Rosenblatt v. Getty Oil Co.*, No. 5278, 8:366.

⇐ 352(1) Corporate records and proceedings; in general

1983 While evidence of post-merger events is normally inadmissible by a defendant to prove the fairness of its actions at the time of the merger, documentary evidence placed into the record by the plaintiff which supported defendant's position need not be ignored.—*Rosenblatt v. Getty Oil Co.*, No. 5278, 8:366.

⇐ 359(5) Photographs and other pictures; sound records and pictures; sound records in general

1984 Where an attorney secretly tapes his conversations with opposing counsel, in the course of each representing his respective client, any transcript made therefrom shall not be used or relied on by any party for any purpose connected to the proceedings.—*Kaplan v. Wyatt*, No. 6361, 9:205.

⇐ 434(8) Fraud; in contracts in general

1984 The doctrine of merger by deed or merger by contract does not preclude a claim for rescission where a plaintiff was induced to enter into the contract because of fraudulent misrepresentations. Such fraud may be proved by parol evidence.—*Craft v. Bariglio*, No. 6050, 9:161.

⇐ 448 Grounds for admission of extrinsic evidence

1984 If the language of a contract is ambiguous, parol evidence can be adduced to explain its meaning.—*Scari v. Scari's Delivery Service, Inc.*, No. 7552, 10:642.

⇐ 470 Grounds for admission

1979 The opinion testimony of the non-expert witness is limited to such opinions or inferences as the judge finds may be rationally based on the perception of the witness and are helpful to a clear understanding of his testimony or to the determination of the fact in issue.—*Weinberger v. UOP, Inc.*, No. 5642, 5:158.

1979 Ordinary opinion evidence is given by a witness who is of ordinary capacity and who has by opportunity acquired a particular knowledge which

is outside the limits of common observation and which may be of value in elucidating a matter under consideration.—*Id.*

⇨472 Matter directly in issue

1979 Opinion testimony is not objectionable on the ground that it embraces the ultimate issue to be decided by the trier of the fact.—*Weinberger v. UOP, Inc.*, No. 5642, 5:158.

⇨486 Value—in general

1964 While there is no doubt that management may spend additional money for advertising, if this increase was motivated by a desire to adjust the relative earning prospects of the two corporations to vindicate the proposed exchange ratio, the court would be justified in making its own estimates of income and expenses for purposes of fair valuation.—*Stryker & Brown v. The Bon Ami Company*, No. 1945; *Gottlieb v. Lestoil Products, Inc.*, No. 1947, 2:157.

⇨601(4) Particular facts or issues; value

1978 Under Delaware law, it is now settled that asset value is not to be determined on a going-concern basis, but rather, net asset value is defined as a theoretical liquidation value.—*In re Creole Petroleum Corp.*, No. 4860, 3:606.

1979 The valuation of stock on a going concern basis is the ultimate objective of an appraisal proceeding. Consideration is to be given to the net asset value of the stock involved. DEL. CODE ANN. tit. 8, § 262.—*Tannetics v. A.J. Industries, Inc.*, No. 5306, 5:337.

1979 Net asset value is the equivalent of theoretical liquidations value, in other words, the value of corporate assets on the basis of a fair market value as of the date of merger. DEL. CODE ANN. tit. 8, § 262.—*Id.*

1979 In an appraisal action, the fair market value of corporate assets constitutes the value of the total of its physical assets as distinguished from the value of the business itself, namely its going concern value. DEL. CODE ANN. tit. 8, § 262.—*Id.*

1979 In an appraisal action, government contracts and patents are capable of estimation for net asset valuation purposes. DEL. CODE ANN. tit. 8, § 262.—*Id.*

1979 A fairly significant weight must be assigned to net asset valuation in determining intrinsic stock value where a conglomerate with wholly owned subsidiaries is being valued in an appraisal action. DEL. CODE ANN. tit. 8, § 262.—*Id.*

1979 The average stock earnings for appraisal purposes are to be determined by averaging the corporation's earnings over a reasonable period of time. This determination is based upon historical earnings rather than prospective earnings, and the customary period of time over which to compute such average is ordinarily fixed at the five-year period immediately preceding the merger. DEL. CODE ANN. tit. 8, § 262.—*Id.*

1979 In an appraisal action where an average earnings per share valuation is made, the number of years over which the average is taken is normally five. However, the period may be shortened or expanded when appropriate, but only in the most unusual situations. DEL. CODE ANN. tit. 8, § 262.—*Id.*

1979 In an appraisal action the market price for stock subject to an appraisal is that which existed immediately prior to the formal announcement of an intention to merge. That price is the closing price for the stock on the day before the announcement. DEL. CODE ANN. tit. 8, § 262.—*Id.*

1979 In an appraisal action where the market value of a stock is being weighed to determine intrinsic value of the stock, the reliability of the market price is a factor to be considered. DEL. CODE ANN. tit. 8, § 262.—*Id.*

1979 When the market value of stock is being weighed to determine the intrinsic value of the shares, the overall reliability of the market price may be questioned and a low percentage value assigned to it if the corporation is a

conglomerate whose shares are not easily susceptible to valuation by the market and the stocks have been traded at low market prices. DEL. CODE ANN. tit. 8, § 262.—*Id.*

EXCHANGE OF PROPERTY

⇦ 1-14 Inclusive
⇦ 10 Exchange of personal property—in general

1978 Where parties under Bahamian law could not legally participate in direct exchange of shares, fact that alternative methods were not used does not nullify agreed-to purchase and exchange.—*Wilmington Trust v. Lee*, Nos. 4000, 4241 & 4924, 4:572.

EXCHANGES

⇦ 1-15 Inclusive
⇦ 9 Mutual dealings and liabilities of members

1982 If circumstances indicate that a dispute has arisen between members of the New York Stock Exchange, then as stated in the N.Y.S.E. Constitution, the matter must be arbitrated regardless of when it arose so as to keep private disputes between exchange members out of the courts.—*Kelleher v. Discount Brokerage Corp. of America*, No. 6701, 8:342.

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⇦ 189 **Proceedings for establisment and determination of claims—jurisdiction**

1975 By Delaware statute, the Chancery Court cannot transfer a money judgment to the Supreme Court, so as to permit execution and at the same time maintain control over the execution processes of that Court. DEL. CODE ANN. tit. 10, § 4734.—*Levien v. Sinclair Oil Corp.*, No. 1883, 1:230.

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⇨ 74 Representation of decedent

1981 The personal representative of a deceased person's estate stands in the deceased person's place and as a consequence, she is bound by the legitimate family business decisions in which the deceased person participated for his own benefit.—*Shields Development Company v. Shields*, No. 5530, 7:354.

⇨ 425 Rights of action by executors or administrators

1984 Executors have the power to maintain an action which could have been maintained by the decedent.—*Devon v. Pantry Pride, Inc.*, No. 7843 & 7849, 10:183.

1984 A statutory right of action survives unless specifically restricted by statute. DEL. CODE ANN. tit. 10, § 3707.—*Id.*

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⇨ 31 Rules of court in general—rules of civil procedure; in general

1976 Federal courts must be particularly alert to prevent the liberal federal procedure from being used for purposes other than those intended by the framers of the Federal Rules of Civil Procedure.—*Zlotnick v. Rudner*, No. 4775, 3:546.

⇨ 161 Class actions—in general; in general

1982 The test of whether certification is timely is whether there has been prejudice to the class or to the opposing parties by any delay in certification of the class.—*Lewis v. Fuqua Industries*, No. 6534, 7:478.

1982 Plaintiff carries the burden of establishing compliance with the

requirements for class action certification. FED. R. CIV. P. 23.—*Meeker v. Bryant*, No. 6245, 7:338.

⇐ 164 Representation of class

1982 One of the requirements of Rule 23(a) is that the claims of the representative party be typical of the claims of the class.—*Merritt v. Colonial Foods Inc.*, No. 6078, 7:345.

1981 The test under rule 23(a)(4) does not focus on how a would-be representative plaintiff came by the knowledge and information on which the class action suit is based. Nor does it require that such a plaintiff reach the decision independently free from the advice and assistance of others.—*Kahn v. Household Acquisition Corp.*, No. 6293, 7:324.

1981 Rule 23(a)(4) requires only a finding by the court that the representative party will fairly and adequately protect the interests of the class. The requirement is prospective in nature, determinable as of the time that the application for class action certification is made.—*Id.*

1981 In a shareholder's class action suit attacking a merger, the class is entitled to something more than blind reliance upon competent counsel by an uninterested and inexperienced representative.—*Id.*

⇐ 165 Common interests in subject-matter, questions and relief

1984 When plaintiffs are the only persons bringing suit, speaking only for themselves, they are not class representatives.—*Charlip v. Lear Siegler, Inc.*, No. 5178, 10:168.

⇐ 186.5 Members of corporations, associations, or unions

1978 Plaintiffs, stockholders, have no standing to bring an action to compel defendant corporation to hold its annual stockholders' meeting within ninety days of the expiration of its fiscal year, when the time requirement provisions of the state statute have not yet been met. DEL. CODE ANN. tit. 8, § 211(c).—*Sarabyn v. Jessco, Inc.*, No. 607, 4:610.

⇐ 187 Stockholders, investors and depositors

1984 A stockholder is entitled to bring a direct action for proxy violations notwithstanding the fact that the underlying transactions involved a claimed injury to the corporation.—*Seibert v. Harper & Row, Publishers, Inc.*, No. 6639, 10:645.

1981 Where potential members of a class action suit are geographically scattered and the holdings of each potential claimant are too small to warrant individual actions, a class of twenty-three members is justified.—*Meeker v. Bryant*, No. 6245, 7:338.

1981 Economic antagonisms between representative and class may be grounds to deny certification.—*Id.*

1981 Whereas to a few shareholders, plaintiff's claims are both typical and potentially atypical, these shareholders should have the opportunity to decide whether plaintiff's claims and their interests are actually economically antagonistic and should have the opportunity to opt out of the proposed class if they desire to do so.—*Id.*

⇐ 203 Who are indispensable parties

1983 There are four interests to be balanced in the procedure outlined in Rule 19(b): First, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provision in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for misjoinder. FED. R. CIV. P. 19(b); DEL. CH. CT. R. 19(b).—*E.I. DuPont de Nemours & Co. v. Shell Oil Co.*, No. 6696, 8:578.

1983 Rule 19 is a rule that must be applied on a case-by-case basis requir-

ing what at times might appear to be disparate results.—*Id.*

1983 Above and beyond the consideration a court is to give to the four interests enunciated in Rule 19(b), it must be remembered that the policy behind the Rule is that dismissal of a case is a last resort.—*Id.*

1983 In order to resolve the issue of joinder, the court must look to the relief sought by the parties.—*Id.*

⇐ 758 Res judicata and pendency of another action

1978 A motion for stay must be denied where the parties and the issues raised in the court of one state are not the same as those raised in the court of another state.—*Sarabyn v. Jessco, Inc.*, No. 607, 4:610.

⇐ 923 Time for filing

1978 If the defense of lack of jurisdiction over the person is neither raised by motion before answer nor stated in the answer, it cannot be raised for the first time by motion after the answer.—*Tuckman v. Aerosonic Corp.*, No. 4094, 5:152.

⇐ 1272 Scope

1981 Discovery should ordinarily be allowed under the concept of relevancy unless it is clear that the information sought can have no possible bearing on the subject matter of the action. FED. R. CIV. P. 26(b)(1).—*Brown v. Rosenberg*, No. 833, 7:470.

⇐ 1323 Persons whose depositions may be taken

1984 An attorney is not immune from being required to give a deposition even when representing a party to the litigation.—*Dart v. Kohlberg, Kravis, Roberts & Co.*, No. 7366, 10:177.

1984 A court should not allow indiscriminate taking of the depositions of counsel, as to do so would be to permit harassment.—*Id.*

1984 A court must be careful not to encourage taking opposing counsels' depositions because much of the information upon which an attorney may have based his signature may be privileged as attorney-client communications and work product.—*Id.*

1984 Depositions of opposing counsel, taken purportedly for Rule 11 purposes, may create an abuse in attempting to acquire privileged information and are easily susceptible to being used merely to harass an opponent. DEL. CH. CT. R. 11.—*Id.*

1984 If possible, the resolution of a Rule 11 motion to dismiss should be made on information from sources other than the deposition of counsel. DEL. CH. CT. R. 11.—*Id.*

⇐ 1332 Objections to taking and grounds for refusal

1984 A court should not allow indiscriminate taking of the depositions of counsel, as to do so would be to permit harassment.—*Dart v. Kohlberg, Kravis, Roberts & Co.*, No. 7366, 10:177.

1984 A court must be careful not to encourage taking opposing counsels' depositions because much of the information upon which an attorney may have based his signature may be privileged as attorney-client communications and work product.—*Id.*

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1984 If possible, the resolution of a Rule 11 motion to dismiss should be made on information from sources other than the deposition of counsel. DEL. CH. CT. R. 11.—*Id.*

⇐ 1359 Time and place of, and procedure for, taking

1982 In the absence of an agreement between the parties, a plaintiff is not entitled to depose defendants at the site of the forum.—*Schreiber v. Carney*, No. 6202, 8:401.

⇐ 1483 Objections and grounds for refusal

1984 Because of the breadth of discoverable material, objections to discovery requests will, in general, not be allowed unless there have been

clear abuses of the process which would result in great and needless expense and time consumption.—*Van De Walle v. Unimation, Inc.*, No. 7046, 10:345.

1984 Courts will usually only forbid interrogatories as being duplicative where the objecting party has shown with particularity that the discovery is in fact fully duplicative and is meant merely to harass the interrogated party.—*Id.*

⇨1588 Corporations, records of in general

1981 Nothing in the Rules of Court would require a party to produce an independent witness for the purpose of discovery by the other party.—*Rosenblatt v. Getty Oil Co.*, No. 5278, 6:362.

1981 An insurance carrier of a defendant can be ordered to appear through an order to compel discovery on the defendant because the insurance carrier stands in the role of a party defendant even though it is not a party in name.—*Id.*

⇨1616 Motion and proceedings thereon—good cause in general

1976 Good cause for discovery depends upon the nature of the case, the nature of the items requested, and the reasons given for showing that a demand for the production of documents is proper.—*Zlotnick v. Rudner*, No. 4775, 3:546.

⇨1618 Motion and proceedings thereon—designation of document or thing and contents thereof

1976 To allow plaintiff the sweeping investigation into all of the business affairs of its competitor on no more than an unsupported assertion that the plaintiff might find useful evidence in the documents would be a perversion of justice.—*Zlotnick v. Rudner*, No. 4775, 3:546.

⇨1698 Class actions, dismissal or compromise of—notice to class and approval of court, necessity of

1980 Another basic purpose behind the promulgation of Rule 23.1 is the elimination of "strike suits," the purpose of which was to entice corporate management into an agreement to buy out a striking stockholder. DEL. CH. CT. R. 23.1.—*Valhi, Inc. v. PSA, Inc.*, No. 5730, 5:533.

⇨1699 Class actions, dismissal or compromise of—determination of propriety

1982 The prospective participants to any undistributed settlement are considered "wards of the court."—*Mendich v. Hunt International Resources Corp.*, No. 5912, 7:487.

1982 In an action by one seeking to participate in a class action settlement fund, the court must, in determining the eligibility of any claim, be guided by principles of equity consistent with the court's traditional supervisory powers over the administration of settlements.—*Id.*

1981 A claims procedure approved by a court should be followed.—*Mendich v. Hunt International Resources, Inc.*, No. 5912, 7:200.

1981 A settlement agreement is an equitable action, and where the equities lie with the stockholders, substantial compliance with the claims procedure is adequate to protect shareholders and their claims.—*Id.*

1981 Claimants to a settlement fund should be given reasonable opportunity to file and receive what is due to them.—*Id.*

1981 A filing deadline in a claims procedure is not inflexible, and must yield, if necessary, to the demands of equity.—*Id.*

1981 The missing of the postmark deadline, even without excuse, is substantial compliance with the procedures for the filing of claims, when all the equities are considered, if the postmark shows mailing within a few days of the deadline.—*Id.*

1981 Fairness requires that where stockholders receive correction forms to modify their initial proof of claim application, they should receive an extra time extension in which to supplement their original claims.—*Id.*

1981 Thirty (30) days from the date of receiving notice is considered a reasonable extension of time for claimants to refile their claims.—*Id.*

1981 Stockholders whose claims were rejected for failing to provide adequate substantiation of their stock ownership must be given reasonable time to substantiate their claim. Thirty (30) days from the date of receiving notice is deemed to be reasonable.—*Id.*

1981 The rejection of claims for failing to be notarized is a "hypertechnicality" and such rejection on that ground will not be permitted.—*Id.*

1981 Equity permits claims rejected for failure to submit proof of ownership under another name to be reinstated, if those stockholders can furnish proper proof of ownership within thirty (30) days of being advised to do so by defendant.—*Id.*

1981 Claims mistakenly asserted to debenture owners who were not part of the settlement class were properly rejected by defendant corporation.—*Id.*

⇨1741 Grounds—in general

1984 A motion to dismiss is viewed with disfavor and is rarely granted.—*O'Malley v. Tele-Communications, Inc.*, Nos. 7273, 7283 & 7284, 9:797.

1982 Judicial comity and *forum non conveniens* provide no justification for a stay or a dismissal when the present cause of action, filed in a state court, did not form a part of the federal action, filed in a different state, and when the events upon which the state action is premised did not occur until after federal suit was filed.—*Kelleher v. Discount Brokerage Corp. of America*, No. 6701, 8:342.

⇨1809 Stockholders, investors, and other class actions

1982 Where mere approval of the corporate action, absent self-interests or other indication of bias, is the sole basis for establishing the directors' wrongdoing and hence for excusing demand on them, plaintiff's suit should ordinarily be dismissed.—*Stepak v. Dean*, No. 6315, 7:509.

⇨1832 Determination—matters considered in general

1984 In appropriate circumstances, materials outside the pleadings can be introduced in response to a Rule 12(b)(6) motion. DEL. CH. CT. R. 12(b)(6).—*O'Malley v. Tele-Communications, Inc.*, Nos. 7273, 7283 & 7284, 9:797.

⇨1838 Effect—pleading over

1985 Where plaintiffs in a shareholder derivative suit were on notice that their complaint was deficient for failure to make demand within a few months after the action was filed, and did nothing to attempt to secure a disposition of the Rule 23.1 defense, the plaintiffs would not be allowed to make demand and file an amended complaint, since any prejudice plaintiffs would then suffer would not be attributable to defendants.—*Sundin v. Fisher*, No. 6918, 10:917.

⇨2533 Motion

1984 If the motion to dismiss raises matters outside of the complaint, then the motion is treated as a motion for summary judgment and discovery is permitted.—*O'Malley v. Tele-Communications, Inc.*, Nos. 7273, 7283 & 7284, 9:797.

1984 Summary judgment may be granted for a party even though that party did not cross-move for it.—*United Pacific Insur. Co. v. Ripsom*, No. 7056, 10:337.

⇨2723 Discretion of court

1983 The decision under Rule 23 as to whether plaintiff or defendant should pay the cost of giving notice to the class lies within the discretion of the court, and is subject to review only on the basis of an abuse of discretion. DEL. CH. CT. R. 23.—*Weinberger v. UOP, Inc.*, No. 5642, 8:428.

1983 In a class action, the combination of a fiduciary relationship between the parties and the establishment of a prima facie case against the defendant may, along with considerations of fairness and equity, justify imposing the costs of giving notice to the class upon the defendant. DEL. CH. CT. R. 23.—*Id.*

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XIII. CONCURRENT AND CONFLICTING JURISDICTION AND COMITY AS BETWEEN FEDERAL COURTS, ⇦ 1131-1158.

⇦ 14 Jurisdiction of entire controversy; pendent jurisdiction

1983 Pendent jurisdiction exists where the state and federal claims, without regard to their state and federal character, derive from a common nucleus of operative facts.—*Eichenberg v. Salomon*, No. 7066, 8:333.

FRANCHISES

⇦ 1-16 Inclusive

⇦ 1 Nature of right

1981 Customary and reasonably anticipated payments required of a particular dealer or retailer which enable him to perform and carry out the terms of an agreement with his supplier do not meet the $100 consideration requirement of DEL. CODE ANN. tit. 6, § 2551(3).—*A.R. Dervaes Co. v. Houdaille Industries, Inc.*, No. 6471, 7:173.

1981 Where a franchise relationship cannot be established under DEL. CODE ANN. tit. 6, § 2551, the franchise rights afforded by DEL. CODE ANN. tit. 6, § 2552(c), 2553(b), may not be invoked.—*Id.*

1977 The definition of "franchise distributor" under the Franchise Security Law is limited to one who is engaged in the business of selling at retail not more than three trademarked or trade-named products. DEL. CODE ANN. tit. 6, § 2551.—*Tulowitzki v. Atlantic Richfield Co.*, No. 5140, 4:544.

⇦ 2 Grants in general

1977 In the absence of extreme or unusual circumstances, the Delaware

Franchise Security Law does not apply to business arrangements between oil companies and their retail dealers in Delaware which exist on a renewable lease basis.—*Tulowitzki v. Atlantic Richfield Co.*, No. 5140, 4:544.

⇨12 Forfeiture

1977 The Franchise Security Law could not impose on an existing agreement an obligation to terminate only for just cause where the obligation did not otherwise contractually exist.—*Tulowitzki v. Atlantic Richfield Co.*, No. 5140, 4:544.

FRAUD

I. DECEPTION CONSTITUTING FRAUD, AND LIABILITY THEREFORE, ⇨ 1-30.

II. ACTIONS, ⇨ 31-67.
- (A) RIGHTS OF ACTION AND DEFENSES, ⇨ 31-38.
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III. CRIMINAL RESPONSIBILITY, ⇨ 68-69.

⇨1 Nature of fraud

1984 Mere acceptance by a bank of a repayment of a loan where the bank has reason to believe the debtor is in financial difficulties does not constitute fraud.—*United Pacific Insur. Co. v. Ripsom*, No. 7056, 10:337.

⇨11(1) Fraudulent representations—matters of fact or of opinion; in general

1984 Mere expression of opinion as to probable future results, when clearly made and understood as such, do not constitute false representations even though they may relate to material matters.—*Craft v. Bariglio*, No. 6050, 9:161.

⇨12 Fraudulent representations—existing facts or expectations or promises

1984 Mere expressions of opinion as to probable future results, when clearly made and understood as such, do not constitute false representations even though they may relate to material matters.—*Craft v. Bariglio*, No. 6050, 9:161.

⇨20 Reliance on representations and inducement to act—in general

1984 Justifiable reliance upon defendant's representations can be shown where a reasonable person would consider such representations to be important in determining his course of action.—*Craft v. Bariglio*, No. 6050, 9:161.

1984 In an action for fraud in which misrepresentation is alleged, the plaintiff must show justifiable reliance on defendant's representations.—*Id.*

1984 The purchaser of a business is under no duty to investigate the accuracy of representations made by the seller concerning its profitability and operational affairs, even if such an opportunity exists.—*Id.*

⇨31 Nature and form of remedy

1984 An action in equity to rescind will lie where there has been fraud.—*Craft v. Bariglio*, No. 6050, 9:161.

FRAUDS, STATUTE OF

I. AGREEMENTS IN CONSIDERATION OF MARRIAGE, ⇨ 1-6.

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IX. OPERATION AND EFFECT OF STATUTE, ⇨ 119-144.

X. PLEADING, EVIDENCE, TRIAL, AND REVIEW, ⇨ 145-162.

⇨ 51 **Possibility of discharge or other termination without performance**

1984 An oral contract to perform services for specified period exceeding one year violates the statute of frauds even though the contract may be terminated within one year. DEL. CODE ANN. tit. 6, § 2714.—*Thomas v. Delaware Adolescent Program, Inc.*, No. 684, 9:239.

⇨ 115(1) **Signature of memorandum—in general; necessity**

1984 Even though an oral contract is reduced to writing, the statute of frauds requires that the writing be signed.—*Thomas v. Delaware Adolescent Program, Inc.*, No. 684, 9:239.

FRAUDULENT CONVEYANCES

I. TRANSFERS AND TRANSACTIONS INVALID, ⇨ 1-171.
(A) GROUNDS OF INVALIDITY IN GENERAL, ⇨ 1-22.
(B) NATURE AND FORM OF TRANSFER, ⇨ 23-41.

(C) PROPERTY AND RIGHTS TRANSFERRED, ⇦ 43-53.
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II. RIGHTS AND LIABILITIES OF PARTIES AND PURCHASERS, ⇦ 172-204.
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III. REMEDIES OF CREDITORS AND PURCHASERS, ⇦ 205-328.
(A) PERSONS ENTITLED TO ASSERT INVALIDITY, ⇦ 205-225.
(B) REMEDIES ON GROUND OF NULLITY OF TRANSFER, ⇦ 226-235.
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(J) JUDGMENT OR DECREE AND EXECUTION, ⇦ 311-317.
(K) DISPOSITION OF PROPERTY OR PROCEEDS, ⇦ 318-324.
(L) REVIEW, ⇦ 325-328.

IV. CRIMINAL RESPONSIBILITY, ⇦ 329-331.

⇨61 Insolvency element of fraud

1975 The condition of being insolvent within the Uniform Fraudulent Conveyance Act can ultimately be determined only by a fact and figure balancing of assets and liabilities, and similar evaluation is necessary under the Delaware capital impairment standard. DEL. CODE ANN. tit. 8, § 160.—*Farland v. Wills*, No. 4888; *Bank of America v. GAC Properties, Inc.*, No. 4914, 1:467.

⇨116 Statutory provisions

1975 If preliminary relief on the basis of a fraudulent conveyance is appropriate under either Delaware or Florida law, it must be based on actual intent to delay, hinder or defraud creditors. DEL. CODE ANN. tit. 6, § 1307, FLA. STAT. § 726.01—*Farland v. Wills*, No. 4888; *Bank of America v. GAC Properties, Inc.*, No. 4914, 1:467.

⇨226 Applications of property to claims of creditors in general

1977 The right of defrauded creditors to proceed in chancery does not depend on the Fraudulent Conveyances Act.—*Aloysius, Butler & Clark Associates Inc. v. First National Retirement Sytems, Inc.*, No. 5232, 4:565.

⇨230 Levy of execution

1977 Chancery has jurisdiction over actions commenced pursuant to the Fraudulent Conveyances Act.—*Aloysius, Butler & Clark Associates, Inc. v. First National Retirement Systems, Inc.*, No. 5232, 4:565.

⇨237(2) Nature and form of remedy; remedy by suit in equity

1977 Equity has jurisdiction over a suit by a creditor to enforce liability on a transferee as a result of a transfer of assets by a transferor corporation which thereby defrauds a creditor of the latter. DEL. CODE ANN. tit. 10, § 342.—*Aloysius, Butler & Clark Associates, Inc. v. First National Retirement Systems, Inc.*, No. 5232, 4:565.

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II. CAUSA MORTIS, ⇨ 53-85.

⇨18(2) Delivery in general —necessity; necessity of surrendering control

1985 For an intended gift of corporate stock to take effect, there must be an actual or constructive delivery to the donee which deprives the donor of all real dominion and control over the stock.—*Citron v. Fairchild Camera & Instrument Corp.*, No. 6085, 10:633.

⇨25 Parol gift of land

1985 A certificate of stock in a corporation may be the subject of a gift if it clearly appears that there was an intention to make the gift and sufficient delivery.—*Citron v. Fairchild Camera & Instrument Corp.*, No. 6085, 10:633.

1985 For an intended gift of corporate stock to take effect, there must be an actual or constructive delivery to the donee which deprives the donor of all real dominion and control over the stock.—*Id.*

INJUNCTION

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- (A) ACTIONS AND OTHER LEGAL PROCEEDINGS, ⇨ 25-33.
- (B) PROPERTY, CONVEYANCES, AND INCUMBRANCES, ⇨ 34-56.
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- (G) PERSONAL RIGHTS AND DUTIES, ⇨ 94-101.
- (H) CRIMINAL ACTS, CONSPIRACIES, AND PROSECUTIONS, ⇨ 102-105.

III. ACTIONS FOR INJUNCTIONS, ⇨ 106-131.

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- (A) GROUNDS AND PROCEEDINGS TO PROCURE, ⇨ 132-159½.
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VIII. LIABILITIES ON BONDS OR UNDERTAKINGS, ⇨ 234-256.

IX. WRONGFUL INJUNCTION, ⇨ 257-261.

⇨ 5 **Mandatory injunction**

1984 Relief by mandatory injunction will only be granted where it is necessary to prevent irreparable injury; but when the right is clear and damage irreparable, equity will not hesitate to act.—*Braunstein's, Inc. v. Jardel Co.*, No. 7542, 9:763.

1984 A mandatory injunction should only be awarded in a clear case, free from doubt.—*Video of Delaware, Inc. v. Silver Screen Video, Inc.*, No. 7890, 10:664.

⇨ 14 **Irreparable remedy at law**

1984 Preliminary injunctive relief will be denied where plaintiffs fail to establish that they would suffer irreparable harm, and monetary relief will compensate plaintiffs for any injuries sustained.—*Rabkin v. Philip A. Hunt Chemical Corp.*, No. 7547, 9:800.

1980 A denial of a restraining order now will not prevent a similar application from being made later. An application for a restraining order will

be denied where there is no immediate threat of any irreparable injury to plaintiff's position.—*Grynberg v. Burke*, No. 5198, 6:230.

⊂⊃56 Disclosure or use of trade secrets

1984 Where employees have expressly agreed as one of the terms of their contract of employment that they will not disclose to their employer's detriment any trade secrets or confidential information which they have acquired in the course of their employment, the employer is entitled to an injunction against a threatened use or disclosure of such confidential information by its former employees for their own benefit or for the benefit of a third person.—*Pfizer, Inc. v. ICI Americas, Inc.*, No. 7785, 10:275.

1984 In order to be protected from disclosure by injunction, information must be such that it derives independent economic value, actual or potential, from not being generally known to others, and from not being readily ascertainable through proper means by others. DEL. CODE ANN. tit. 6, § 2001(4).—*Id.*

⊂⊃58 Negative or restrictive covenants or stipulations in general

1984 When a plaintiff demonstrates a likelihood of success on the merits and a likelihood of irreparable injury, the court may restrain a defendant from acting in contravention of a restrictive covenant.—*Comfort, Inc. v. McDonald*, No. 1066(S), 9:420.

⊂⊃61(2) Contracts in restraint of trade

1984 When a plaintiff demonstrates a likelihood of success on the merits and a likelihood of irreparable injury, the court may restrain a defendant from acting in contravention of a restrictive covenant.—*Comfort, Inc. v. McDonald*, No. 1066(S), 9:420.

1980 Where employee violated covenant not to engage in a rival business after termination of employment, and where the services of the employee have been such that he acquired knowledge of employer's business methods and secrets, and disclosure of which will result in irreparable injury to the employer, an injunction will issue.—*Bunnell Plastics, Inc. v. Gamble*, No. 5913, 6:331.

1975 Where there are sufficient facts to show that an employee subject to a covenant not-to-compete within a period of one year is terminated from his employment at the wish of his employer, the restrictive covenant not-to-compete is no longer effective.—*East Coast Resorts, Inc. v. Lynch*, No. 553, 1:452.

⊂⊃63 Inducing breach of contract

1975 Injunctive relief may be granted against a business competitor whose improper conduct induces an employee to breach previous business commitments.—*East Coast Resorts, Inc. v. Lynch*, No. 553, 1:452.

⊂⊃69 Management of corporate affairs or business

1977 A court will interfere with the holding of a stockholder's meeting only with great reluctance.—*Bell v. Lavino*, No. 5319, 3:572.

1977 An injunctive order should never issue to enjoin an annual meeting of stockholders in the absence of a showing of irreparable harm or fraud.—*Id.*

⊂⊃70 Management of corporate affairs or business—in general

1980 The purpose of the stay was to allow for the continuity of incumbent management and to thus provide corporation stability, but at the same time to attempt to insure during the pendency of the appeal that incumbent management would take no action designed to entrench or personally benefit themselves.—*Grynberg v. Burke*, No. 5198, 6:230.

1978 In an application for a temporary restraining order, the court enjoins stockholder meetings only with great reluctance.—*Sarabyn v. Jessco, Inc.*, No. 607, 4:610.

1977 A court will interfere with the holding of a stockholder's meeting only with great reluctance.—*Bell v. Lavino*, No. 5319, 3:572.

1977 An injunctive order should never issue to enjoin an annual meeting of stockholders in the absence of a showing of irreparable harm or fraud.—*Id.*

⇐ 72 Disposition of or dealings with corporate property

1977 Where there is nothing in the terms and conditions of the sale of corporate assets which is so inexpedient or indicates such a disregard of the best interests of the corporation as to justify the interference of the court, a preliminary injunction will be denied.—*Simkins Industries, Inc. v. Fibreboard Corporation*, No. 5369, 3:144.

⇐ 73 Infringement or denial of rights of stockholders

1983 Injunctive relief is appropriate in order to stop the involvement of a stockholder meeting date, where an attempt has been made to determine a dissident stockholder's ability to wage a proxy contest.—*American Pacific Corp. v. Super Food Services, Inc.*, No. 7020, 8:320.

⇐ 112 Time to sue in general

1980 Where the court can foresee some attempted action in the future based upon the terms of the agreement, it will not grant a protective order as to the pending discovery sought by plaintiff.—*Grynberg v. Burke*, No. 5198, 6:230.

⇐ 118(2) Pleading—bill, complaints, or petition, title, right of or injury to plaintiff

1984 In order to give rise to a presumption of misappropriation of trade secrets, applicant must allege facts, which, if proven, would establish irreparable injury.—*Technicon Data Systems Corp. v. Curtis 1000, Inc.*, No. 7644, 9:499.

⇐ 126 Presumptions and burden of proof

1984 In order to give rise to a presumption of misappropriation of trade secrets, applicant must allege facts, which, if proven, would establish irreparable injury.—*Technicon Data Systems Corp. v. Curtis 1000, Inc.*, No. 7644, 9:499.

⇐ 128 Weight and sufficiency

1984 Information falling within the classification of "know-how" can be protected by injunction where it is of sufficient novelty and where it has been maintained in secrecy to such an extent as to give rise to a claim of property right.—*Pfizer, Inc. v. ICI Americas, Inc.*, No. 7785, 10:275.

⇐ 132 Nature and scope of provisional remedy

1985 A temporary restraining order will never be granted unless it is reasonably necessary for the preservation of the status quo or protection of applicant's rights.—*American Hoechst v. Nuodex, Inc.*, No. 7950, 10:823.

1985 A preliminary injunction is granted only to preserve the true *status quo* until trial.—*Tomczak v. Morton Thiokol, Inc.*, No. 7861, 10:921.

1984 Preliminary injunction constitutes extraordinary relief and is addressed to the sound discretion of the court, to be guided according to the particular circumstances in each case.—*Joseph v. Shell Oil Co.*, No. 7450, 9:191.

1984 A preliminary injunction is granted only to maintain the true status quo.—*Pantry Pride, Inc. v. Georgeson & Co.*, No. 7848, 10:254.

1983 The court has broad discretion in granting or refusing to grant interim injunctive relief.—*Kahn v. United States Sugar Corp.*, No. 7313, 8:593.

1983 A preliminary injunction is an extraordinary remedy which is only granted to prevent truly irreparable injury. Plaintiff bears the burden of proof and must show (1) irreparable injury and (2) reasonable probability of success on the merits.—*Van De Walle v. Unimation, Inc.*, No. 7046, 8:418.

1979 Injunction will be granted when it is reasonably necessary for the preservation of the status quo.—*Fisher v. Moltz*, No. 6068, 5:530.

1979 An injunction will be issued at preliminary stage where the plaintiffs have shown the reasonable probabil-

ity of ultimate success upon a final hearing on the merits.—*Id.*

1978 A temporary restraining order should not be granted except to maintain the true status quo.—*Sarabyn v. Jessco, Inc.*, No. 607, 4:610.

1977 A temporary restraining order, being an extraordinary remedy, should never be granted, particularly *ex parte*, unless the right is clearly established.—*Kramedos v. Kramedos*, No. 518, 3:149.

⇦133 Mandatory injunction

1984 Plaintiff's request for a mandatory injunction places a great burden on it, especially at the temporary restraining order stage. Plaintiff must show that upon granting the temporary restraining order no irreparable harm will occur before a hearing can be held.—*Wesley College, Inc. v. Girard Bank Delaware*, No. 822, 9:249.

1984 A request for an injunction requiring defendant bank to turn over to plaintiff securities at issue does not maintain the status quo.—*Id.*

⇦134 Rights to temporary injunction in general

1984 Preliminary injunctive relief is proper where the potential for immediate irreparable harm is present. Misuse of customer lists of patients could result in an immediate loss of business which would be difficult to ascertain.—*Dickinson Medical Group, P.A. v. Foote*, No. 834-K, 9:180.

1984 Where plaintiff's case is based upon speculation more so than upon fact, plaintiff will have failed to establish a basis for preliminary injunctive relief.—*Sachs v. R.P. Scherer Corp.*, No. 7537, 9:234.

1984 In an action for a preliminary injunction to enjoin the holding of an annual stockholders meeting and an election of directors, there is a heavy burden placed upon a plaintiff to show cause.—*Cavalcade Oil Corp. v. Texas American Energy Corp.*, No. 7605, 9:417.

1979 Where application for injunctive relief is based upon corporate opportunity doctrine and the defendant corporation is controlled by one to whom such standards have no application, such relief is improper.—*Field v. Allyn*, No. 5951, 5:357.

1978 At the temporary restraining order stage, a strong burden is put on the plaintiff to show merits of the controversy.—*Sarabyn v. Jessco, Inc.*, No. 607, 4:610.

⇦135 Discretion of court

1984 The granting or withholding of preliminary injunctive relief is always discretionary.—*Bacine v. Scharffenberger*, No. 7862; *Tampco Enterprises, Inc. v. City Investing Co.*, No. 7866, 10:603.

1984 Preliminary injunction constitutes extraordinary relief and is addressed to the sound discretion of the court, to be guided according to the particular circumstances in each case, with the full and complete disclosure requirement imposed on a fiduciary. Therefore, the effectuation of the tender offer was held in abeyance until further disclosure was made.—*Joseph v. Shell Oil Co.*, No. 7450, 9:191.

1984 The burden of proof is always on the applicant for the preliminary injunction, and the court has broad discretion in granting or refusing to grant interim injunctive relief.—*Pantry Pride, Inc. v. Georgeson & Co.*, No. 7848, 10:254.

1984 Where it does not appear that financial impact on defendant nor expressed public interest outweighs potential harm to the plaintiff, the court in its discretion may issue a preliminary injunction enjoining the commercial exploitation of the plaintiff's trade secret.—*Technicon Data Systems Corp. v. Curtis 1000, Inc.*, No. 7644, 10:322.

1984 The court of chancery has broad discretion in granting or denying a preliminary injunction.—*Technicon Data Systems Corp. v. Curtis 1000, Inc.*, No. 7644, 9:499.

1983 A preliminary injunction is an extraordinary remedy which is only granted in order to prevent truly irreparable injury. Plaintiff bears the burden of proof and must show (1) irreparable injury and (2) reasonable probability of success on the merits.—

Van De Walle v. Unimation, Inc., No. 7046, 8:418.

1983 The court has broad discretion when determining whether or not to grant interim injunctive relief. The court of chancery is reluctant to grant preliminary relief if by doing so it will grant all the relief which the applicant may ultimately be entitled to after trial.—*Id.*

⇐136 Grounds for temporary injunction

1977 Factors to be considered as to whether a preliminary injunction should issue include, first, a determination as to the likelihood that plaintiffs will succeed upon final hearing; second, whether the plaintiffs are to suffer irreparable injury; and third, a balancing of the respective conveniences and hardships between the parties so as to determine if the imposition of the temporary restraint is justified as a matter of equity.—*Lewis v. Great Western Corp.*, No. 5397, 3:583.

⇐136(1) Grounds for temporary injunction; in general

1985 The failure to give a defendant a reasonable opportunity to prepare to be heard requires that the standards ordinarily applicable to applications for a temporary restraining order be followed.—*American Hoechst v. Nuodex, Inc.*, No. 7950, 10:823.

1985 A preliminary injunction will not issue when plaintiff fails to demonstrate likelihood of success on the merits in the final hearing and when equities dictate that interim injunctive relief should be denied.—*Lowenschuss v. Option Clearing Corp.*, No. 7972, 10:882.

1985 Irreparable injury requirement for injunctive relief is satisfied where the legal right granted by the law appears to be clear, where interference with that legal right will necessarily occur in the absence of injunctive relief, and where it reasonably appears that money damages cannot adequately compensate for the interference with that legal right.—*Plaza Securities Co. v. O'Kelley*, No. 7932, 10:891.

1984 In a decision at the preliminary injunction stage, the burden is on the moving party to demonstrate the likelihood that it will prevail upon the merits at a final hearing.—*Braunstein's Inc., v. Jardel Co.*, No. 7542, 9:763.

1984 Preliminary injunction will not be issued unless it is apparent that there is a reasonable probability of the moving party's ultimate success upon a final hearing, that failure to issue an injunction will result in immediate and irreparable injury, and that the balance of hardships weighs in the applicant's favor.—*Id.*

1984 A preliminary injunction will not issue where plaintiff has failed to demonstrate convincingly that it is likely to succeed on the merits of its position upon final hearing.—*DMG, Inc. v. Aegis Corp.*, No. 7619, 9:437.

1984 Application for preliminary injunction is evaluated in light of the given context in which the application has arisen.—*Id.*

1984 A preliminary injunction is an extraordinary remedy which is only granted in order to prevent truly irreparable injury.—*Pantry Pride, Inc. v. Georgeson & Co.*, No. 7848, 10:254.

1984 In order to obtain a preliminary injunction, the plaintiff must show the reasonable probability of ultimate success on the merits.—*Id.*

1984 Preliminary injunction is an extraordinary remedy which may be granted only if the applicants demonstrate a reasonable probability of ultimate success on the merits at a final hearing, if the failure to issue an injunction will result in immediate and irreparable injury, and if the balance of hardships weighs in the applicant's favor.—*Thompson v. Enstar Corp.*, Nos. 7641 & 7643, 9:822, *Huffington v. Enstar Corp.*, No. 7543, 9:185.

1983 A preliminary injunction is an extraordinary remedy which is only granted in order to prevent truly irreparable injury. The applicant has the burden of showing the reasonable probability of ultimate success on the

merits.—*Kahn v. United States Sugar Corp.*, No. 7313, 8:593.

1982 A preliminary injunction will not issue unless a plaintiff has established a reasonable probability of ultimate success on final hearing.—*Klein v. Soundesign Corp.*, Nos. 6636 & 6643, 7:332.

1979 A temporary restraining order will not issue where the court is not satisfied that plaintiff has demonstrated a likelihood of success on the merits under the legal theory upon which application for injunctive relief was premised.—*Field v. Allyn*, No. 5951, 5:357.

1978 Pending argument upon a motion for a preliminary injunction to set aside a voting trust agreement allegedly induced by fraud and to cancel the stock incentive plan brought about thereby, a temporary restraining order should issue to maintain the status quo on the outstanding options and untransferred, undistributed stock grants where there is a scramble to exercise the challenged rights.—*Grynberg v. Burke*, No. 5198, 4:607.

1978 At the temporary restraining order stage, the plaintiff has the burden of proving a reasonable probability of ultimate success.—*Sarabyn v. Jessco, Inc.*, No. 607, 4:610.

1978 A temporary restraining order should not be granted except to prevent irreparable harm.—*Id.*

1978 In an application for a temporary restraining order, plaintiffs-stockholders cannot complain that the board of directors of defendant corporation has not filled one vacancy on the board of directors when the filling of that vacancy would not have shown a reasonable probability of plaintiffs' ultimate success since the four existing directors had already unanimously approved the merger in question, and the one vacancy would have made no difference to the plaintiffs.—*Id.*

1978 An application for temporary restraining order must be denied, when plaintiffs have not sustained the burden of showing that they have a reasonable probability of ultimate success.—*Id.*

1978 An application for a temporary restraining order must be denied where plaintiffs have failed to show that they have suffered irreparable harm.—*Id.*

1978 In a decision at the preliminary injunction stage, the burden is upon the moving party to demonstrate the likelihood that it will prevail upon the merits at a final hearing.—*Savin Business Machines Corp. v. Rapifax Corp.*, No. 5331, 4:578.

1978 In a decision at the preliminary injunction stage, the burden is upon the moving party to demonstrate that it will suffer irreparable injury during the interim if the present status quo is not maintaned.—*Id.*

⊂ 136(2) Grounds for temporary injunction; subjects of protection

1985 The failure to give a defendant a reasonable opportunity to prepare to be heard requires that the standards ordinarily applicable to applications for a temporary restraining order be followed.—*American Hoechst v. Nudoex, Inc.*, No. 7950, 10:823.

1977 When a resort to blatant economic coercion, such as cutting off a dealer's gas supply, is attempted in lieu of taking definite action in reliance on what is claimed later to be a legal right to terminate, temporary equitable intervention is warranted and reasonable notice of termination is required.—*Tulowitzki v. Atlantic Richfield Co.*, No. 5140, 4:544.

⊂ 136(3) Grounds for temporary injunction; nature and extent of injury

1985 A temporary restraining order will never be granted unless it is reasonably necessary for the preservation of the status quo or protection of applicant's rights.—*American Hoechst v. Nuodex, Inc.*, No. 7950, 10:823.

1985 To secure the extraordinary relief

of a preliminary injunction to prevent consummation of a merger after its apparent approval by affected shareholders, plaintiff must make a clear showing of entitlement.—*Repairman's Service Corp. v. Nat'l Intergroup, Inc.*, No. 7811, 10:902.

1984 Preliminary injunctive relief will not be granted unless there is a clear case of imminent, irreparable injury.—*Hemphill v. Singer, Co.*, No. 818, 8:574.

1984 A preliminary injunction must be denied when hardship outweighs benefit.—*Pantry Pride, Inc. v. Georgeson & Co.*, No. 7848, 10:254.

1979 The injunction will be granted when it will not unduly harm anyone, because its effect will be merely to postpone the consummation of the offer until the final ruling.—*Fisher v. Moltz*, No. 6068, 5:530.

1979 Injunction will be granted when it is reasonably necessary for the preservation of the status quo.—*Id.*

1978 A temporary restraining order should not be granted except to maintain the true status quo.—*Sarabyn v. Jessco, Inc.*, No. 607, 4:610.

1978 A temporary restraining order should not be granted except to prevent irreparable harm.—*Id.*

1978 An application for a temporary restraining order must be denied where plaintiffs have failed to show that they have suffered irreparable harm.—*Id.*

1977 An imminent threat of irreparable injury is required in order to justify preliminary injunctive relief.—*Chapin v. Benwood Found., Inc.*, No. 5305, 4:561.

1977 An injunction will never issue merely because it will do no harm.—*Id.*

⊂⊃137 Grounds for denial of temporary injunction

1978 In an action to compel defendant corporation to hold its annual stockholders' meeting within ninety days of the expiration of its fiscal year, plaintiff must show prejudice to them by the fact that the annual meeting has not yet taken place.—*Sarabyn v. Jessco, Inc.*, No. 607, 4:610.

1978 An application for temporary restraining order must be denied where the plaintiffs hyper-technically complain that the notices and proxy materials were sent out under the name of the president of the defendant corporation instead of the secretary as provided by the bylaws of the corporation, and when plaintiffs have failed to show irreparable harm by so receiving the notices and proxy materials.—*Id.*

⊂⊃137(1) Grounds for denial of temporary injunction; in general

1984 A preliminary injunction will not issue unless a plaintiff has established a reasonable probability of ultimate success on final hearing.—*DMG, Inc. v. Aegis Corp.*, No. 7619, 9:437.

1983 Plaintiff's inability to make a decision as to whether he would later seek the statutory appraisal remedy, because he did not at the time of the merger know precisely what amount he would be paid for his interest in the corporation, was not a sufficient threat of irreparable harm to support his motion for a temporary restraining order to stop the merger.—*Carroll v. CM & M Group, Inc.*, No. 7368, 8:565.

1979 Where application for injunctive relief is based upon corporate opportunity doctrine and the defendant corporation is controlled by one to whom such standards have no application, such relief is improper.—*Field v. Allyn*, No. 5951, 5:357.

1979 Where the entity that acquires a controlling stock interest has a principal other than the two executive officers of the controlled corporation, namely a separate corporation with a fifty-one percent voting interest, there is no clear showing that corporate fiduciaries have embarked the corporation's resources in order to gain a business opportunity for themselves, so as to support a temporary restraining order.—*Id.*

1978 A temporary restraining order is not warranted as to individual defendants whose challenged shares would not dilute the holdings of plaintiff majority stockholders to any substantial degree where defendants are before the court and subject to its rulings should plaintiffs ultimately prevail, and where their stock grant share interests have been committed to others prior to the present application.—*Grynberg v. Burke*, No. 5198, 4:607.

1978 The majority's act of increasing its representation through the purchase of authorized stock equally available to the minority shareholders does not, of itself, constitute a breach of the fiduciary duty owed the minority as will support a preliminary injunction.—*Savin Business Machines Corp. v. Rapifax Corp.*, No. 5331, 4:578.

1978 Preliminary injunction relief of a tender offer will be denied when the target corporation fails to establish any violation of DEL. CODE ANN. tit. 8, § 203.—*Servomation Corp. v. City Investing Co.*, No. 5676, 4:599.

⊂ 137(2) Grounds for denial of temporary injunction; injury to defendant

1985 The failure to give a defendant a reasonable opportunity to prepare to be heard requires that the standards ordinarily applicable to applications for a temporary restraining order be followed.—*American Hoechst v. Nuodex, Inc.*, No. 7950, 10:823.

1985 Before granting a temporary restraining order, the court must balance the equities or conveniences of the respective parties.—*Id.*

1985 Even when the possibility of irreparable injury is shown, the court must still balance the competing equities between the parties and hardships occurring as a result of granting or denying the application for preliminary injunction.—*Tomczak v. Morton Thiokol, Inc.*, No. 7861, 10:921.

1984 In acting upon applications for preliminary injunctions, a court of equity has broad discretionary powers and is to structure a remedy which is fair to all competing interests.—*Joseph v. Shell Oil Co.*, No. 7450, 9:191.

1984 A preliminary injunction must be denied when hardship outweighs benefit.—*Pantry Pride, Inc. v. Georgeson & Co.*, No. 7848, 10:254.

1984 In action upon an application for a preliminary injunction, the probability of ultimate success is one of the elements which must always be weighed in the balance, along with the probability of any harm to be suffered by one party or the other on account of giving or withholding the temporary relief.—*Technicon Data Systems Corp. v. Curtis 1000, Inc.*, No. 7644, 10:322.

1979 The injunction will be granted when it will not unduly harm anyone, because its effect will be merely to postpone the consummation of the offer until the final ruling.—*Fisher v. Moltz*, No. 6068, 5:530.

1978 When considering whether to preliminarily enjoin a tender offer, whether the tender offer is oversubscribed and whether it will thus be necessary for the offering corporation to purchase the tendered shares on a pro rata basis is a mere possibility of a threat of injury to its stockholders which may never arise which is an important consideration that would call for dismissal of the complaint.—*A.S.G. Industries, Inc. v. MLZ, Inc.*, No. 5580, 4:282.

⊂ 137(4) Grounds for denial of temporary injunction; rights in doubt

1985 Before granting a temporary restraining order, the court must balance the equities or conveniences of the respective parties.—*American Hoechst v. Nuodex, Inc.*, No. 7950, 10:823.

1985 To secure the extraordinary relief of a preliminary injunction to prevent consummation of a merger after its apparent approval by affected share-

holders, plaintiff must make a clear showing of entitlement.—*Repairman's Service Corp. v. Nat'l Intergroup, Inc.*, No. 7811, 10:902.

1985 Even when the possibility of irreparable injury is shown, the court must still balance the competing equities between the parties and hardships occurring as a result of granting or denying the application for preliminary injunction.—*Tomczak v. Morton Thiokol, Inc.*, No. 7861, 10:921.

1984 A preliminary injunction will not be issued unless it is apparent that there is a reasonable likelihood of success on the merits of the claim.—*Hemphill v. Singer Co.*, No. 818, 8:574.

1984 In acting upon applications for preliminary injunctions, a court of equity has broad discretionary powers and is to structure a remedy which is fair to all competing interests.—*Joseph v. Shell Oil Co.*, No. 7450, 9:191.

1984 In action upon an application for a preliminary injunction, the probability of ultimate success is one of the elements which must always be weighed in the balance, along with the probability of any harm to be suffered by one party or the other on account of giving or withholding the temporary relief.—*Technicon Data Systems Corp. v. Curtis 1000, Inc.*, No. 7644, 10:322.

1979 A temporary restraining order will not issue where the court is not satisfied that plaintiff has demonstrated a likelihood of success on the merits under the legal theory upon which application for injunctive relief was premised.—*Field v. Allyn*, No. 5951, 5:357.

1979 An injunction will be issued at preliminary stage where the plaintiffs have shown the reasonable probability of ultimate success upon a final hearing on the merits.—*Fisher v. Moltz*, No. 6068, 5:530.

1979 The injunction will be granted when it will not unduly harm anyone, because its effect will be merely to postpone the consummation of the offer until the final ruling.—*Id.*

1978 In order for an applicant for a temporary restraining order to prevail, the burden is upon him to show that he has a reasonable probability of ultimate success.—*Lakeshore Deli, Inc. v. Landis Wilson*, No. 715, 5:143.

1978 In an action where plaintiff stockholder seeks a temporary restraining order to restrict sale of stock, such order will not be issued in the absence of any writing to show the existence of a stockholder's agreement.—*Id.*

1977 Plaintiff shareholders who seek to enjoin the sale of corporate assets are denied a preliminary injunction because of their failure to demonstrate the possibility of ultimate success.—*Simkins Industries, Inc. v. Fibreboard Corp.*, No. 5369, 3:144.

1975 Preliminary injunctions will not issue unless complainant satisfies the court that there is a reasonable probability of ultimate success, and improbability of success may arise from evidence of disputed questions of fact as well as questions of law.—*East Coast Resorts, Inc. v. Lynch*, No. 553, 1:452.

⊂⊃140 Form and requisites of application in general

1979 Pending argument upon a motion for a preliminary injunction, the plaintiff has the burden to demonstrate on the record that there is a likelihood that it will be able to establish the alleged improper motive at the final hearing.—*Telvest, Inc. v. Outdoor Sports Industries, Inc.*, No. 5798, 5:156.

⊂⊃145 Affidavits for injunction

1984 Where the only affidavit filed in support of plaintiff's application is that of plaintiff's New York counsel and it goes only to verify the proxy materials and to set forth certain trading prices for the common stock of the corporation and there is nothing offered other than counsel's argument that present value of the stock will be reduced by the reclassification plan, the complaint itself is unverified.—

Sachs v. R.P. Scherer Corp., No. 7537, 9:234.

1979 Pending argument upon a motion for a preliminary injunction to prevent the distribution of certain preferred stock, a contention by the defendant that the board of directors acted in good faith can be established through affidavits of the directors.—*Telvest, Inc. v. Outdoor Sports Industries, Inc.*, No. 5798, 5:156.

⇨147 Counter affidavits and other evidence

1979 An injunction will be issued at preliminary stage where the plaintiffs have shown the reasonable probability of ultimate success upon a final hearing on the merits.—*Fisher v. Moltz*, No. 6068, 5:530.

1979 Pending argument upon a motion for a preliminary injunction, the plaintiff has the burden to demonstrate on the record that there is a likelihood that it will be able to establish the alleged improper motive at the final hearing.—*Telvest, Inc. v. Outdoor Sports Industries, Inc.*, No. 5798, 5:156.

⇨150 Restraining order pending hearing of application

1984 A request for an injunction requiring defendant bank to turn over to plaintiff securities at issue does not maintain the status quo.—*Wesley College, Inc. v. Girard Bank Delaware*, No. 822, 9:249.

1984 The defendant must have an opportunity to present a defense before the court will grant a mandatory injunction which upsets the status quo.—*Id.*

1984 A temporary restraining order is granted only to maintain the status quo.—*Id.*

1978 A temporary restraining order will be denied when there will be ample time for the court to decide whether or not the plaintiff should prevail.—*Carrier Corp. v. United Technologies Corp.*, No. 5705, 4:616.

⇨151 Scope of inquiry and questions considered

1985 Irreparable injury requirement for injunctive relief is satisfied where the legal right granted by the law appears to be clear, where interference with that legal right will necessarily occur in the absence of injunctive relief, and where it reasonably appears that money damages cannot adequately compensate for the interference with that legal right.—*Plaza Securities Co. v. O'Kelley*, No. 7932, 10:891.

1985 Where the record indicates that entitlement for requested preliminary injunction is lacking, there is no need to balance the relative harm or inconvenience to the parties if such relief were granted.—*Repairman's Service Corp. v. Nat'l Intergroup, Inc.*, No. 7811, 10:902.

1985 A preliminary injunction is an extraordinary remedy and will only be granted to prevent truly irreparable injury.—*Tomczak v. Morton Thiokol, Inc.*, No. 7861, 10:921.

1985 In an action for preliminary injunction, the plaintiffs bear the burden of showing a reasonable probability of success on the merits.—*Id.*

1984 It is well settled that preliminary injunctive relief will not be granted unless plaintiff has established that it has a reasonable probability of success on the merits and that it will suffer irreparable harm if the relief is not granted.—*American International Rent A Car, Inc. v. Cross*, No. 7583, 9:144.

1984 In a decision at the preliminary injunction stage, the burden is on the moving party to demonstrate the likelihood that it will prevail upon the merits at a final hearing.—*Braunstein's, Inc. v. Jardel Co.*, No. 7542, 9:763.

1984 Preliminary injunction will not be issued unless it is apparent that there is a reasonable probability of moving party's ultimate success upon a final hearing, that failure to issue an injunction will result in immediate and irreparable injury, and that the balance of hardships weighs in the applicant's favor.—*Id.*

1984 Where an application for preliminary injunction is before the

court, the plaintiff has the burden of showing that there is a reasonable probability that he would prevail on the merits if a trial were held.—*Joseph v. Shell Oil Co.*, No. 7450, 9:191.

1984 Where plaintiffs have shown a reasonable probability of success, the court must then determine if there is a probability of irreparable harm to justify a preliminary injunction. To permit minority shareholders to tender their shares without full disclosure by defendants might forever deny their tendering shareholders their right to be treated fairly and would therefore constitute irreparable harm.—*Id.*

1984 The burden of proof is always on the applicant for the preliminary injunction, and the court has broad discretion in granting or refusing to grant interim injunctive relief.—*Pantry Pride, Inc. v. Georgeson & Co.*, No. 7848, 10:254.

1984 The court will not exercise its discretion to grant preliminary injunctive relief unless it is satisfied that the moving party has shown a likelihood of success on the merits of its claim and that it will suffer immediate irreparable harm in the event that the motion is denied.—*Pfizer, Inc. v. ICI Americas, Inc.*, No. 7785, 10:275.

1984 In seeking a preliminary injunction, the plaintiff has the burden of proving a reasonable probability of success on the merits and that it will suffer irreparable injury if the court fails to issue the requested relief.—*Reading Co. v. Trailer Train Co.*, No. 7422, 9:223.

1984 An application for preliminary injunction to enjoin reclassification of the common stock of the corporation will not be granted where the record failed to demonstrate either a probability of success on the merits upon a final hearing or that plaintiff and others similarly situated were likely to suffer immediate irreparable harm in the event of a preliminary injunction.—*Sachs v. R.P. Scherer Corp.*, No. 7537, 9:234.

1984 Where plaintiffs have failed to establish a probability of success on the merits of the controversy, the court need not consider the issue of irreparable harm.—*E.J. Stephen, Inc. v. Ceccola*, No. 7578, 9:815.

1984 A motion for a preliminary injunction will be denied where plaintiffs have not met their burden of establishing a reasonable probability of success on the merits of the controversy.—*Id.*

1984 In seeking a preliminary injunction, plaintiff has the burden of showing a reasonable probability of success on the merits if a trial was held.—*Technicon Data Systems Corp. v. Curtis 1000, Inc.*, No. 7644, 10:322.

1984 In exercising its discretion to grant a temporary restraining order, the court must determine whether applicant has shown a likelihood of success on the merits, imminent, irreparable harm, and that plaintiff will suffer greater harm if the injunction is not entered than defendant would suffer if it was granted.—*Technicon Data Systems Corp. v. Curtis 1000, Inc.*, No. 7644, 9:499.

1984 The heavy burden of establishing the prerequisites for issuance of a preliminary injunction rests on the plaintiffs and cannot be satisfied merely by showing that a dispute exists; rather, plaintiffs must clearly establish each of the required elements, and injunctive relief will never be granted unless earned.—*Thompson v. Enstar Corp.*, Nos. 7641 & 7643, 9:822; *Huffington v. Enstar Corp.*, No. 7543, 9:185.

1982 Actions taken by the management of a corporation which will confuse stockholders and preclude dissenting stockholders from waging a fair proxy contest with an informed electorate will cause irreparable harm to the dissident stockholders; such injury tips the balance of harm in favor of granting an injunction to stay a forthcoming stockholders meeting.—*American Pacific Corp. v. Super Food Services, Inc.*, No. 7020, 8:320.

1981 A party seeking preliminary injunctive relief must in addition to establishing the threat of irreparable injury and that such injury outweighs any harm to the party against whom the preliminary injunction is sought were a preliminary injunction to be granted, demonstrate a reasonable probability of success on the merits.—*A.R. Dervaes Co. v. Houdaille Industries Inc.*, No. 6471, 7:173.

1981 In determining whether an applicant for a preliminary injunction will suffer irreparable injury if the preliminary injunction is denied, the court must also consider potential hardship to the parties enjoined.—*Roizen v. Multivest, Inc.*, No. 6535, 7:214.

1979 Application for a temporary restraining order seeking to prevent the completion of a short-form merger under DEL. CODE ANN. tit. 8, § 253, will be disposed of only upon arguments offered by counsel, when counsel indicates that these are sole basis of request for relief.—*Field v. Allyn*, No. 5951, 5:357.

1979 A temporary restraining order will not issue where the court is not satisfied that plaintiff has demonstrated a likelihood of success on the merits under the legal theory upon which application for injunctive relief was premised.—*Id.*

1979 The injunction will be granted when it will not unduly harm anyone, because its effect will be merely to postpone the consummation of the offer until the final ruling.—*Fisher v. Moltz*, No. 6068, 5:530.

1979 Pending argument upon a motion for a preliminary injunction, to permit the defendant to offer witnesses for a limited purpose would compel the plaintiff to call the same, leading to an evidentiary battle, which should not be permitted where there is no compelling necessity.—*Telvest, Inc. v. Outdoor Sports Industries, Inc.*, No. 5798, 5:156.

1978 At the temporary restraining order stage, the plaintiff has the burden of proving a reasonable probability of ultimate success.—*Sarabyn v. Jessco, Inc.*, No. 607, 4:610.

1978 An application for a temporary restraining order must be denied where plaintiffs have failed to show that they have suffered irreparable harm.—*Id.*

1978 A temporary restraining order should not be granted except to prevent irreparable harm.—*Id.*

1978 An application for temporary restraining order must be denied where the plaintiffs hyper-technically complain that the notices and proxy materials were sent out under the name of the president of the defendant corporation instead of the secretary as provided by the bylaws of the corporation, and when plaintiffs have failed to show irreparable harm by so receiving the notices and proxy materials.—*Id.*

1978 In a decision at the preliminary injunction stage, the burden is upon the moving party to demonstrate the likelihood that it will prevail upon the merits at a final hearing.—*Savin Business Machines Corp. v. Rapifax Corp.*, No. 5331, 4:578.

1978 In a decision at the preliminary injunction stage, the burden is upon the moving party to demonstrate that it will suffer irreparable injury during the interim if the present status quo is not maintained.—*Id.*

1977 The test of whether to issue an injunction is the probability of ultimate success on the merits plus the likelihood of irreparable harm to the corporation if the injunction is not granted.—*Kramedos v. Kramedos*, No. 518, 3:149.

⇨152 Hearing and determination

1985 Before granting a temporary restraining order, the court must balance the equities or conveniences of the respective parties.—*American Hoechst v. Nuodex, Inc.*, No. 7950, 10:823.

1984 Even if the possibility of irreparable harm is shown, the court must still balance the competing

equities between the parties.—*Pantry Pride, Inc. v. Georgeson & Co.*, No. 7848, 10:254.

1979 An injunction will be issued at preliminary stage where the plaintiffs have shown the reasonable probability of ultimate success upon a final hearing on the merits.—*Fisher v. Moltz*, No. 6068, 5:530.

1979 The injunction will be granted when it will not unduly harm anyone, because its effect will be merely to postpone the consummation of the offer until the final ruling.—*Id.*

1979 Pending argument upon a motion for a preliminary injunction, to permit the defendant to offer witnesses for a limited purpose would compel the plaintiff to call the same, leading to an evidentiary battle, which should not be permitted where there is no compelling necessity.—*Telvest, Inc. v. Outdoor Sports Industries, Inc.*, No. 5798, 5:156.

1979 A preliminary injunction application customarily conducted on the basis of the paper record may be supplemented by live testimony at the hearing at the discretion of the court. DEL. CH. CT. R., 43(e), 65.—*Id.*

1978 The court must rule on the application for a temporary restraining order without the benefit of hearing testimony.—*Lakeshore Deli, Inc. v. Landis Wilson*, No. 715, 5:143.

1978 At the temporary restraining order stage, the merits of a controversy are always difficult to determine because there is no opportunity for a full hearing on the merits.—*Sarabyn v. Jessco, Inc.*, No. 607, 4:610.

1978 In an application for a temporary restraining order, it is necessary to balance the equity between the parties.—*Id.*

⇨153 Conditions on granting

1984 Where a complaint fails to state a claim, preliminary injunctive relief must be denied.—*Rabkin v. Philip A. Hunt Chemical Corp.*, No. 7547; 9:800.

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I. RIGHTS AND LIABILITIES IN GENERAL, ⇨ 1-26.

II. RATE, ⇨ 27-38(2).

III. TIME AND COMPUTATION, ⇨ 39-60.

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⇨31 Liabilities subject to statutory rate

1978 Inasmuch as 8 Del. C. § 262(h) does not fix the interest rate, the matter is one for judicial discretion. DEL. CODE ANN. tit. 8, §§ 253, 262.—*In re Creole Petroleum Corp.*, No. 4860, 3:606.

1978 The court is not licensed to employ merely an arbitrary presumption in establishing an interest rate. DEL. CODE ANN. tit. 8, §§ 253, 262.—*Id.*

⇨37(1) After maturity of debt; in general

1980 In determining interest to be awarded dissenting stockholders of corporation absorbed in merger, court properly focused on what would have been rate of interest at which prudent investor could have invested money rather than in focusing on how much it would have cost corporation to borrow the money.—*Tannetics, Inc. v. A.J. Industries, Inc.*, No. 5306, 6:347.

⇨49 Suspension—in general

1984 Where the period of delay in turning in stock for a cash-out merger is caused solely by plaintiff, fairness requires that no interest be awarded for that period.—*Schlossberg v. First Artists Production Co.*, No. 6670, 9:491.

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⊂⊃121 Construction and operation of revenue laws in general—in general

1975 The nomenclature adopted by the taxpayer will not be decisive, nor will the form of the transaction be exalted at the expense of the transaction's substance.—*Lasker v. McDonnell & Co., Inc.*, No. 3560, 1:208.

⊂⊃304 Necessity that income be realized

1975 Ordinarily, the purchase of property does not result in the realization of income. However, where the purpose underlying a transaction is the compensation of the purchaser through a bargain purchase then income is deemed to have been realized. 26 U.S.C. § 61.—*Lasker v. McDonnell & Co., Inc.*, No. 3560, 1:208.

1975 The principles underlying the federal tax system recognize the need to realize income only when the amount becomes readily ascertainable.—*Id.*

⊂⊃311 Damages

1975 In a bargain purchase controversy, when a claim for damages exists, a strong inference arises that any payments made to the claimant were made in an effort to salvage a business situation.—*Lasker v. McDonnell & Co., Inc.*, No. 3560, 1:208.

⊂⊃341 Salaries, wages, or compensation—in general

1975 Ordinarily, the purchase of property does not result in the realization of income. However, where the purpose underlying a transaction is the compensation of the purchaser through a bargain purchase then income is deemed to have been realized. 26 U.S.C. § 61.—*Lasker v. McDonnell & Co., Inc.*, No. 3560, 1:208.

⊂⊃343 Extra compensation or gift

1975 Where there is an employer-employee relationship then compensation will be presumed from a bargain purchase.—*Lasker v. McDonnell & Co., Inc.*, No. 3560, 1:208.

⊂⊃440 Market value

1975 If stock has no readily ascertainable market value at the time of acquisition due to the effect of restrictions upon transfer then no income is realized. However, where the effect of the investment restriction merely makes it necessary for the taxpayer to meet certain requirements preliminary to sale, then the restriction may serve to diminish present market value but it does not deprive the stock entirely of value.—*Lasker v. McDonnell & Co., Inc.*, No. 3560, 1:208.

⊂⊃504 Items deductible in general

1975 It is a fundamental principal of federal tax law that an accrued expense becomes deductible only when all events have occurred from which the liability is determined and the amount fixed.—*Lasker v. McDonnell & Co., Inc.*, No. 3560, 1:208.

⊂⊃517 Interest paid or accrued—particular transactions in general

1975 A fairly well defined set of tests has evolved to ascertain the true nature of an advance to a corporation by stockholders: (1) the degree of risk assumed; (2) the proportion or disproportion of the debenture issued to stockholders to their stockholdings; (3) the ability of the creditor to share with general creditors in the assets in the event of liquidation or dissolution; (4) the use of the equity securities to provide sufficient capital to sustain the normal operations of the corporation.—*Lasker v. McDonnell & Co., Inc.*, No. 3560, 1:208.

⊂⊃574 Year or period in which deductible—time when expenses are incurred or accrue

1975 It is a fundamental principal of federal tax law that an accrued expense becomes deductible only when all events have occurred from which the liability is determined and the amount fixed.—*Lasker v. McDonnell & Co., Inc.*, No. 3560, 1:208.

⇐594 Necessity and determination of actual losses—necessity of actual loss

1975 A loss must be actual and present and not merely contemplated as more or less sure to occur in the future. If the loss may be shown to be reasonably certain in fact and ascertainable in amount, it may be deducted before it is absolutely realized.—*Lasker v. McDonnell & Co., Inc.*, No. 3560, 1:208.

⇐595 Necessity and determination of actual losses—certainty of loss

1975 A loss must be actual and present and not merely contemplated as more or less sure to occur in the future. If the loss may be shown to be reasonably certain in fact and ascertainable in amount, it may be deducted before it is absolutely realized.—*Lasker v. McDonnell & Co., Inc.*, No. 3560, 1:208.

1975 If a solvent debtor may be reasonably expected to be located and pay over the sums owed, the loss is not deductible. The deduction will not be allowable until all reasonable possibilities of recoupment have been exhausted.—*Id.*

⇐1202 Departmental decisions

1975 A technical advise memorandum issued by the Internal Revenue Service does not have the force of law and is not binding on a court.—*Lasker v. McDonnell & Co., Inc.*, No. 3560, 1:208.

⇐1471 Presumptions and burden of proof—in general

1975 The assessment list of Commissioner of Internal Revenue is presumed correct and its production establishes a prima facie case for the government. The burden of impeaching this presumption is upon the party challenging the assessment. (26 U.S.C. § 6020(6)(2)).—*Lasker v. McDonnell & Co., Inc.*, No. 3560, 1:208.

1975 The taxpayer generally bears the burden of persuasion.—*Id.*

1975 In a situation where the taxpayer, in addition to bearing the burden of production, must also prove that the nonexistence of the presumed fact is more probable than its existence, then the quantum of proof is less than otherwise.—*Id.*

⇐1513 Incomes and profits taxable—value of corporate stocks and securities

1975 If stock has no readily ascertainable market value at the time of acquisition due to the effect of restrictions upon transfer then no income is realized. However, where the effect of the investment restriction merely makes it necessary for the taxpayer to meet certain requirements preliminary to sale, then the restriction may serve to diminish present market value but it does not deprive the stock entirely of value.—*Lasker v. McDonnell & Co., Inc.*, No. 3560, 1:208.

⇐2368 Evidence

1975 A presumption of correctness attaches to the Commissioner's assessment. Where fraud is alleged, however, no presumption attaches and the government must prove a "knowing violation." 26 U.S.C. § 6681(a)(b)(c); 26 U.S.C. § 7454; § 6323(i)(1).—*Lasker v. McDonnell & Co., Inc.*, No. 3560, 1:208.

JOINT VENTURES

⇐1-8 Inclusive

⇐1.2 Essential elements

1984 "Joint Venture" is an enterprise undertaken by several persons jointly to carry out a single business not amounting to a partnership, for their mutual benefit, in which they combine their property, money, effects, skill, and knowledge.—*J. Royal Parker Assoc., Inc. v. Parco Brown & Root, Inc.*, No. 7013, 10:215.

⇦ 4(1) In general; in general

1984 Relationship of joint venturers is fiduciary in character and imposes upon all participants the utmost good faith, fairness, and honesty in dealing with each other with respect to the enterprise.—*J. Royal Parker Assoc., Inc. v. Parco Brown & Root, Inc.*, No. 7013, 10:215.

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⇨ 92 Nature of judgment by default

1981 Policy of the law is to decide controversies on the merits.—*Delaware Medical Services Corps. v. Delaware Ambulance Service, Inc.*, No. 6339, 6:356.

⇨ 178 Nature of summary judgment

1984 The function of a summary judgment is to provide an expeditious and economical termination of a lawsuit when there is no genuine issue as to any material fact.—*Thomas v. Delaware Adolescent Program, Inc.*, No. 684, 9:239.

1978 Differences as to material facts prevent summary judgment and require that the case go to trial.—*Wilmington Trust v. Lee*, Nos. 4000, 4241 & 4924, 4:572.

1977 The purpose of summary judgment is to eliminate a trial if a trial is unnecessary.—*Zlotnick v. Rudner*, No. 4775, 5:135.

1977 The motion for summary judgment must be used with due regard for its purposes.—*Id.*

⇨ 180 Actions in which summary judgment is authorized

1984 When an ultimate fact to be determined is one of motive, inten-

tion, or other subjective matter, summary judgment is ordinarily inappropriate.—*Pennzoil Co. v. Getty Oil Co.*, No. 7425, 10:260.

1981 Where there was an insufficient record to determine the director's good faith for abstaining from a Board meeting vote on a corporate transaction, summary judgment would be inappropriate.—*Dalton v. American Investment Co.*, No. 6305, 6:402.

⇦181 Grounds for summary judgment

1981 Where there was an insufficient record to determine the director's good faith for abstaining from a Board meeting vote on a corporate transaction, summary judgment would be inappropriate.—*Dalton v. American Investment Co.*, No. 6305, 6:402.

⇦181(2) Grounds for summary judgment; absence of issue of fact

1984 Summary judgment is appropriate only when there is no genuine issues as to any facts material to the dispute between the parties.—*Mandell v. Stromberg*, No. 1018, 10:636.

1984 In the context of summary judgment, it is incumbent upon the movant to demonstrate that no material question of fact exists.—*Safecard Services, Inc. v. Credit Card Services Corp.*, No. 6426, 10:298.

1984 The function of a summary judgment is to provide an expeditious and economical termination of a lawsuit when there is no genuine issue as to any material fact.—*Thomas v. Delaware Adolescent Program, Inc.*, No. 684, 9:239.

1984 Summary judgment will not be granted if the pleadings, affidavits, and other proof raise a genuine issue as to any facts material to the dispute between the parties.—*Id.*

1984 To obtain summary judgment, movant must demonstrate to a reasonable certitude that there is no triable issue of material fact.—*Id.*

1977 The summary judgment procedure is designed to promptly dispose of actions in which there is no genuine issue of fact.—*Zlotnick v. Rudner*, No. 4775, 5:135.

⇦181(14) Grounds for summary judgment; partial summary judgment

1977 If the court determines that a partial entry of summary judgment will not materially expedite the adjudicatory processes, it may decline to so enter the partial summary judgment.—*Zlotnick v. Rudner*, No. 4775, 5:135.

⇦181(15) Grounds for summary judgment; particular cases in general

1981 For a defendant to be entitled to summary judgment on a claim of conspiracy, he must show that none of the facts are susceptible of an interpretation that might give rise to a conspiracy.—*Tuckman v. Aerosonic Corp.*, No. 4094, 6:413.

⇦181(31) Grounds for summary judgment; stock and stockholders, cases involving

1984 An issue of whether a decision was unjust or made in bad faith will not be resolved on summary judgment if there are material issues of fact.—*James v. Tandy Corp.*, No. 7033, 10:226.

1983 Where defendants' motion for summary judgment, if successful, would reduce by two-thirds the members of plaintiff's class, and would also affect the burden of proof at trial on behalf of the remaining members of the class, an order by the court purporting to define the class and directing that notice be sent to all class members before the summary judgment decision has been made would be premature and possibly wasteful to both time and money, and so should be deferred.—*Citron v. E.I. DuPont de Nemours & Co.*, No. 6219, 8:571.

1981 On a motion for summary judg-

ment, the court must determine whether or not there is any evidence supporting a favorable conclusion to the non-moving party.—*Tuckman v. Aerosonic Corp.*, No. 4094, 6:413.

⊂⊃185 Motion or other application—evidence in general

1984 Movant for summary judgment bears the burden of demonstrating clearly the absence of any genuine issue of material fact and any doubt will be resolved against movant.—*United Pacific Insur. Co. v. Ripsom*, No. 7056, 10:337.

⊂⊃185(1) Motion or other application—evidence in general; in general

1984 A motion for summary judgment ordinarily should be denied where the shareholder has alleged a proper purpose for inspection of books and records. DEL. CODE ANN. tit. 8, § 220 .—*Safecard Services, Inc. v. Credit Card Services Corp.*, No. 6426, 10:298.

⊂⊃185(2) Evidence in general; presumptions and burden of proof

1984 Summary judgment requires the proponent to prove the absence of genuine issues of material fact, and all doubts are resolved against him.—*Mandell v. Stromberg*, No. 1018, 10:636.

1984 In the context of summary judgment, the facts must be viewed in the manner most favorable to the nonmovant with all factual inferences resolved in this favor.—*Safecard Services, Inc. v. Credit Card Services Corp.*, No. 6426, 10:298.

1979 In considering a motion for summary judgment, the facts are construed in a light most favorable to the plaintiff.—*Schreiber v. Bryan*, No. 4250, 5:381.

1975 On the motion of a defendant for summary judgment, he has the burden of demonstrating that there is no dispute as to any possible issue of fact material to any valid legal theory advanced by plaintiff in support of his case.—*Liboff v. Allen*, No. 2669, 2:350.

1975 On the motion of a defendant for summary judgment, the plaintiff has the burden to disclose evidence which will demonstrate the existence of a genuine issue of fact.—*Id.*

1975 Where defendants, in a case which has been pending for seven years have complied with plaintiff's discovery applications and have ostensibly submitted a full record of the questioned transaction, move for summary judgment only after plaintiff indicates that she is ready for trial, it is incumbent on plaintiff to come forward with the proof on which she relies to dispute the evidence on which defendants premise their motions; she is not entitled to await trial so as to see if she can find any.—*Id.*

1975 While on a motion for summary judgment all inferences must be resolved in favor of the party against whom judgment is sought, the inferences must come from facts, not suppositions.—*Id.*

⊂⊃185(5) Motion or other application—evidence in general; weight and sufficiency

1981 Summary judgments are rarely granted in conspiracy cases where the parties ultimately rely on facts discovered at trial, which gives rise to varied inferences in order to obtain a favorable judgment.—*Tuckman v. Aerosonic Corp.*, No. 4094, 6:413.

⊂⊃185.2(1) Motion or other application—use of affidavits; in general

1984 Once the movant in a motion for summary judgment alleges facts which, if undenied, entitle him to summary judgment, the defending party must dispute the facts by an affidavit or proof of similar weight.—*Safecard Services, Inc. v. Credit Card Services Corp.*, No. 6426, 10:298.

⊂⊃186 Hearing and determination

1984 Claims where waste of corporate assets is alleged are seldom subject to

summary disposition.—*Grubb v. Bernstein*, No. 6998, 10:210.

1984 It is not appropriate to weigh the evidence on a motion for summary judgment.—*James v. Tandy Corp.*, No. 7033, 10:226.

1984 The facts are to be viewed most favorably to the nonmoving party when summary judgment is the issue.—*Mandell v. Stromberg*, No. 1018, 10:636.

1984 The function of a judge in passing on a motion for summary judgment is not to weigh evidence but to determine whether or not there is any evidence supporting a favorable conclusion to the nonmoving party.—*Pennzoil Co. v. Getty Oil Co.*, No. 7425, 10:260.

1984 An application for summary judgment is always addressed to the discretion of the trial court and it is improper to deny such an application if the circumstances indicate that a trial on the merits is advisable.—*Id.*

1984 It is the function of the court to determine whether the evidence reflects a genuine issue of fact and not to weigh the evidence for persuasiveness when the issue is summary judgment. DEL. CH. CT. R. 56(c).—*Wechsler v. Abramowitz*, Nos. 6861 & 6862, 9:833.

1981 On a motion for summary judgment, the court must determine whether or not there is any evidence supporting a favorable conclusion to the non-moving party.—*Tuckman v. Aerosonic Corp.*, No. 4094, 6:413.

⇐ 527 Construction with reference to decisions or findings

1979 In a derivative suit the plaintiff is not relieved of the burden of proving his ownership of the corporation's stock by relying on a prior ruling which stated that plaintiff had purchased shares of stock in the corporation.—*Schreiber v. Bryan*, No. 4250, 5:381.

⇐ 550 Nature of action or other proceeding—in general

1979 In a derivative suit the plaintiff is not relieved of the burden of proving his ownership of the corporation's stock by relying on a prior ruling which stated that plaintiff had purchased shares of stock in the corporation.—*Schreiber v. Bryan*, No. 4250, 5:381.

⇐ 587 Theory of action or recovery

1984 Plaintiff cannot proceed on a new legal theory when all of the allegations raised by plaintiff have previously been decided.—*James v. Tandy Corp.*, No. 7033, 10:226.

⇐ 636 Courts or other tribunals rendering judgment—in general

1985 A party who fails to preserve his ground for appeal with respect to a separate and independent ruling of a trial court is barred by the effect of the ruling even though the appealing party succeeds in reversing that portion of the judgment which is appealed.—*Trans World Airlines, Inc. v. Summa Corp.*, No. 1607, 10:929.

⇐ 644 Nature of action or other proceeding—in general

1985 A party who fails to preserve his ground for appeal with respect to a separate and independent ruling of a trial court is barred by the effect of the ruling even though the appealing party succeeds in reversing that portion of the judgment which is appealed.—*Trans World Airlines, Inc. v. Summa Corp.*, No. 1607, 10:929.

⇐ 714(1) Identity of subject-matter; in general

1985 A party who fails to preserve his ground for appeal with respect to a separate and independent ruling of a trial court is barred by the effect of the ruling even though the appealing party succeeds in reversing that portion of the judgment which is appealed.—*Trans World Airlines, Inc. v. Summa Corp.*, No. 1607, 10:929.

⇐ 720 Matters in issue—matters actually litigated and determined

1984 The doctrine of collateral estop-

pel precludes a redetermination of facts actually litigated and determined in a prior proceeding.—*James v. Tandy Corp.*, No. 7033, 10:226.

1983 The rule against claim splitting is an aspect of the doctrine of *res judicata*. The rule is that if plaintiffs fail to assert claims in a civil action which could have been asserted, they will be precluded from asserting their omitted claims in a subsequent action.—*Eichenberg v. Salomon*, No. 7066, 8:333.

⇦ 724 Essentials of adjudication—in general

1984 Plaintiff should be afforded an opportunity to refute claims by defendants. Therefore, collateral estoppel will not apply.—*James v. Tandy Corp.*, No. 7033, 10:226.

LABOR RELATIONS

I. IN GENERAL, ⇦ 1-40.

II. LABOR RELATIONS ACTS, ⇦ 41-80.

III. LABOR ORGANIZATIONS, ⇦ 81-170.

IV. COLLECTIVE BARGAINING, ⇦ 171-240.
- (A) IN GENERAL, ⇦ 171-190.
- (B) BARGAINING REPRESENTATIVES, ⇦ 191-240.

V. LABOR CONTRACTS, ⇦ 241-280.

VI. DISPUTES AND CONCERTED ACTIVITIES, ⇦ 281-360.
- (A) NATURE OF ACTIVITY, ⇦ 281-320.
- (B) NATURE OF DISPUTE AND PURPOSE OF ACTIVITY, ⇦ 321-340.
- (C) PERSONS CONCERNED; SECONDARY PRESSURES, ⇦ 341-360.

VII. UNFAIR LABOR PRACTICES, ⇦ 361-410.

VIII. MEDIATION, CONCILIATION, AND ARBITRATION, ⇦ 411-500.
- (A) IN GENERAL, ⇦ 411-430.
- (B) ARBITRATION AGREEMENTS, ⇦ 431-450.
- (C) PROCEEDINGS AND AWARD, ⇦ 451-475.
- (D) JUDICIAL REVIEW AND ENFORCEMENT OF DECISIONS, ⇦ 476-500.

IX. LABOR RELATIONS BOARDS AND PROCEEDINGS, ⇦ 501-660.
- (A) IN GENERAL, ⇦ 501-530.
- (B) PARTIES, NOTICE, PLEADING, AND EVIDENCE, ⇦ 531-590.
  1. IN GENERAL, ⇦ 531-550.
  2. WEIGHT AND SUFFICIENCY OF EVIDENCE, ⇦ 551-590.

(C) HEARING AND DETERMINATION, ⇦ 591-660.
1. IN GENERAL, ⇦ 591-610.
2. ORDERS, ⇦ 611-660.

X. JUDICIAL REVIEW AND ENFORCEMENT OF DECISIONS OF LABOR RELATIONS BOARDS, ⇦ 661-750.
(A) REVIEW BY COURTS, ⇦ 661-700.
(B) ENFORCEMENT BY COURTS, ⇦ 701-750.

XI. CIVIL LIABILITIES, ⇦ 751-790.

XII. INJUNCTIONS, ⇦ 791-1050.
(A) NATURE AND SUBJECTS OF RELIEF, ⇦ 791-850.
1. IN GENERAL, ⇦ 791-810.
2. DISPUTES AND CONCERTED ACTIVITIES, ⇦ 811-850.
(B) STATUTORY REGULATIONS OR RESTRICTIONS, ⇦ 851-920.
1. IN GENERAL, ⇦ 851-880.
2. LABOR DISPUTES IN GENERAL, ⇦ 881-900.
3. PERSONS CONCERNED OR INTERESTED; SECONDARY PRESSURES, ⇦ 901-920.
(C) PROCEEDINGS, ⇦ 921-960.
(D) PRELIMINARY AND INTERLOCUTORY INJUNCTIONS, ⇦ 961-990.
(E) PERMANENT INJUNCTION AND OTHER RELIEF, ⇦ 991-1010.
(F) VIOLATION AND ENFORCEMENT, ⇦ 1011-1050.

XIII. OFFENSES AND PENALTIES, ⇦ 1051-1080.

XIV. WAGES AND HOURS REGULATIONS, ⇦ 1081-1658.
(A) MINIMUM WAGES AND OVERTIME PAY, ⇦ 1081-1320.
1. IN GENERAL, ⇦ 1081-1120.
2. PERSONS AND EMPLOYMENTS WITHIN REGULATIONS, ⇦ 1121-1190.
3. EXEMPTIONS, ⇦ 1191-1260.
4. OPERATION AND EFFECT OF REGULATIONS, ⇦ 1261-1320.
(B) OTHER WAGE REGULATIONS, ⇦ 1321-1350.
(C) HOURS OF SERVICE, ⇦ 1351-1420.
(D) ADMINISTRATIVE POWERS AND PROCEEDINGS, ⇦ 1421-1470.
(E) ACTIONS FOR WAGES, DAMAGES, OR PENALTIES, ⇦ 1471-1590.
1. RIGHT OF ACTION AND DEFENSES, ⇦ 1471-1490.

2. PARTIES AND PLEADING, ⇨ 1491-1510.
3. EVIDENCE, ⇨ 1511-1540.
4. DAMAGES AND AMOUNT OF RECOVERY, ⇨ 1541-1560.
5. TRIAL, JUDGMENT, AND REVIEW, ⇨ 1561-1590.

(F) INJUNCTIONS, ⇨ 1591-1640.

(G) OFFENSES AND PROSECUTIONS, ⇨ 1641-1658.

⇨177 Duty to bargain collectively

1977 Delaware statute requiring State Personnel Commission and Director to meet with the bargaining representative of public employees at reasonable times and to negotiate in good faith with respect to any adopted or amended rules does not require further meetings after the public hearing. DEL. CODE ANN. tit. 29, § 5914.—*Council 81 American Federation of State County and Municipal Employees v. State Personnel Commission*, No. 4665, 1:456.

⇨257 Construction

1984 Where expenditure of funds under a collective bargaining agreement is expressly made dependent upon appropriation by the state General Assembly, a state agency is not obligated to seek other funds from within its budget or elsewhere within the executive branch to compensate for deficiencies which have arisen.—*Delaware State Troopers' Lodge Fraternal Order of Police, Lodge #6 v. State*, No. 7228, 9:425.

⇨262 Construction—parties; employees covered

1984 Where a state agency enters into a collective bargaining agreement with its employees, the fact that the state agency may be a part of the executive branch of the state government does not, as a matter of law, grant the plaintiff a right to relief from the governor or other members of the executive department who are not included in the terms of the agreement.—*Delaware State Troopers' Lodge Fraternal Order of Police, Lodge #6 v. State*, No. 7228, 9:425.

264 Performance or breach

1984 A state agency is required to do all those things contemplated and to perform all acts within its power that are necessary to bring about the performance of its undertakings under a collective bargaining agreement with its employees.—*Delaware State Troopers' Lodge Fraternal Order of Police, Lodge #6 v. State*, No. 7228, 9:425.

⇨416 Availability of judicial remedies in general

1984 Where the arbitral process in under attack, the better course is for the court to retain jurisdiction to consider post-arbitration claims of unfairness.—*Leason v. Merrill Lynch, Pierce, Fenner & Smith*, No. 6914, 9:776.

⇨434.1 Matters subject to arbitration in general—arbitration favored

1984 When arbitration has been contractually agreed to by the parties, there is a strong preference for resolving disputes through arbitration.—*Leason v. Merrill Lynch, Pierce, Fenner & Smith*, No. 6914, 9:776.

⇨436 Enforcement in general

1984 Where the arbitral process is under attack, the better course is for the court to retain jurisdiction to consider post-arbitration claims of unfairness.—*Leason v. Merrill Lynch, Pierce, Fenner & Smith*, No. 6914, 9:776.

⇨479 Grounds of impeachment

1984 The court has the authority to vacate an award tainted by "evident

partiality" or one which is beyond the power of the arbitrators. DEL. CODE ANN. tit. 10, § 5714(a)(2), (3).—*Leason v. Merrill Lynch, Pierce, Fenner & Smith*, No. 6914, 9:776.

⇦ 818 Picketing

1980 This case does not demonstrate the degree of violence necessary to persuade the court to disregard what is normally a constitutional right to express one's views by picketing.—*Getty Refining & Marketing Co. v. Oil Chemical & Atomic Workers International Union, Local #8-898*, No. 6081, 6:220.

1980 When there is not a long history of violence, the defendants' rights to freedom of speech as well as to peaceably assemble must prevail over the rights of plaintiffs not to be bothered by demonstrators.—*Id.*

⇦ 825 Intimidation and violence

1980 Where there is a clear showing of violence on the picket lines and in order to prevent the continuance of such violence, the court will rescind its authorization for the placing of pickets.—*Getty Refining & Marketing Co. v. Oil Chemical & Atomic Workers International Union, Local #8-898*, No. 6081, 6:220.

LANDLORD AND TENANT

I. CREATION AND EXISTENCE OF THE RELATION, ⇦ 1-19.

II. LEASES AND AGREEMENTS IN GENERAL, ⇦ 20-49(3).
- (A) REQUISITES AND VALIDITY, ⇦ 20-36.
- (B) CONSTRUCTION AND OPERATION, ⇦ 37-49(3).

III. LANDLORD'S TITLE AND REVERSION, ⇦ 50-69.
- (A) RIGHTS AND POWERS OF LANDLORD, ⇦ 50-60.
- (B) ESTOPPEL OF TENANT, ⇦ 61-69.

IV. TERMS FOR YEARS, ⇦ 70-112½.
- (A) NATURE AND EXTENT, ⇦ 70-73.
- (B) ASSIGNMENT, SUBLETTING, AND MORTGAGE, ⇦ 74-81.
- (C) EXTENSIONS, RENEWALS, AND OPTIONS TO PURCHASE OR SELL, ⇦ 81½-92.
- (D) TERMINATION, ⇦ 93-112½.

V. TENANCIES FROM YEAR TO YEAR AND MONTH TO MONTH, ⇦ 113-116(7).

VI. TENANCIES AT WILL AND AT SUFFERANCE, ⇦ 117-120(4).

VII. PREMISES, AND ENJOYMENT AND USE THEREOF, ⇦ 121-180(6).
- (A) DESCRIPTION, EXTENT, AND CONDITION, ⇦ 121-125.
- (B) POSSESSION, ENJOYMENT, AND USE, ⇦ 126-144.

(C) INCUMBRANCES, TAXES, AND ASSESSMENTS, ⇦ 145-149.
(D) REPAIRS, INSURANCE, AND IMPROVEMENTS, ⇦ 150-161.
(E) INJURIES FROM DANGEROUS OR DEFECTIVE CONDITION, ⇦ 162-170.
(F) EVICTION, ⇦ 171-180.

VIII. RENT AND ADVANCES, ⇦ 181-274(9).
(A) RIGHTS AND LIABILITIES, ⇦ 181-216.
(B) ACTIONS, ⇦ 217-238.
(C) LIEN, ⇦ 239-262½.
(D) DISTRESS, ⇦ 263-274(9).

IX. RE-ENTRY AND RECOVERY OF POSSESSION BY LANDLORD, ⇦ 275-318(3).

X. RENTING ON SHARES, ⇦ 319-333.

⇦ 74 **Assignability and agreement to assign leases and contracts**

1984 A rental agreement may restrict tenant's right to assign the rental agreement, and the right to sublease the premises may be conditional on obtaining landlord's consent, which cannot be unreasonably withheld. DEL. CODE ANN. tit. 25, § 5512(b).—*Braunstein's, Inc. v. Jardel Co.*, No. 7542, 9:763.

LIMITATION OF ACTIONS

I. STATUTES OF LIMITATION, ⇦ 1-42.
(A) NATURE, VALIDITY, AND CONSTRUCTION IN GENERAL, ⇦ 1-15.
(B) LIMITATIONS APPLICABLE TO PARTICULAR ACTIONS, ⇦ 16-42.

II. COMPUTATION OF PERIOD OF LIMITATION, ⇦ 43-138.
(A) ACCRUAL OF RIGHT OF ACTION OR DEFENSE, ⇦ 43-64.
(B) PERFORMANCE OF CONDITION, DEMAND, AND NOTICE, ⇦ 65-69.
(C) PERSONAL DISABILITIES AND PRIVILEGES, ⇦ 70-78.
(D) DEATH AND ADMINISTRATION, ⇦ 80-83.
(E) ABSENCE, NONRESIDENCE, AND CONCEALMENT OF PERSON OR PROPERTY, ⇦ 84-94.
(F) IGNORANCE, MISTAKE, TRUST, FRAUD, AND CONCEALMENT OF CAUSE OF ACTION, ⇦ 95-104.

(G) PENDENCY OF LEGAL PROCEEDINGS, INJUNCTION, STAY, OR WAR, ⇨ 104½-114.

(H) COMMENCEMENT OF ACTION OR OTHER PROCEEDING, ⇨ 115-138.

III. ACKNOWLEDGMENT, NEW PROMISE, AND PART PAYMENT, ⇨ 139-164.

IV. OPERATION AND EFFECT OF BAR BY LIMITATION, ⇨ 165-175.

V. PLEADING, EVIDENCE, TRIAL, AND REVIEW, ⇨ 176-202(2).

⇨ 5(2) Construction of limitation laws in general

1975 Where the statute of limitations bars the legal remedy, it shall bar the equitable in analogous cases or in reference to the same subject matter, when legal and equitable claims so far correspond that the only difference is that one remedy may be enforced in a Court of Law and the other in a Court of Equity. *A fortiori*, where a legal claim is joined in an action in equity under the principle of complete relief, the statute should be applied.—*Tuckman v. Aerosonic Corp.*, No. 4094, 1:463.

⇨ 55(3) Torts; negligence in performance of professional services

1975 Oral argument to the effect that filings with the SEC and accountants' certifications constitute fraudulent concealment cannot save a count from the statute of limitations when the count has simple negligence as its underlying basis.—*Tuckman v. Aerosonic Corp.*, No. 4094, 1:463.

⇨ 99(1) Fraud as ground for relief—in general; in general

1975 Under the *Bovay* rule, the statute of limitations is applied to derivative actions which seek recovery of damages or other essential legal relief but is not applied in cases involving allegations of fraudulent self-dealing when those seeking the benefit of the statute are officers and directors who profited personally from their misconduct.—*Tuckman v. Aerosonic Corp.*, No. 4094, 1:463.

1975 If outside experts, on whom many must depend for the integrity of corporate affairs, knowingly conspire with self-dealing fiduciaries to defraud those very persons who in practicality would rely on their advice, the same trust principles of *Bovay* should apply for the statute of limitations.—*Id.*

⇨ 100(7) Fraud as ground for relief—discovery of fraud; fraud of person acting in official or fiduciary capacity

1975 If outside experts, on whom many must depend for the integrity of corporate affairs, knowingly conspire with self-dealing fiduciaries to defraud those very persons who in practicality would rely on their advice, the same trust principles of *Bovay* should apply for the statute of limitations.—*Tuckman v. Aerosonic Corp.*, No. 4094, 1:463.

1975 Oral argument to the effect that filings with the SEC and accountants' certifications constitute fraudulent concealment cannot save a count from the statute of limitations when the count has simple negligence as its underlying basis.—*Id.*

MANDAMUS

I. NATURE AND GROUNDS IN GENERAL, ⇨ 1-23(2).

II. SUBJECTS AND PURPOSES OF RELIEF, ⇨ 24-140.
- (A) ACTS AND PROCEEDINGS OF COURTS, JUDGES, AND JUDICIAL OFFICERS, ⇨ 24-62.
- (B) ACTS AND PROCEEDINGS OF PUBLIC OFFICERS AND BOARDS AND MUNICIPALITIES, ⇨ 63-121.
- (C) ACTS AND PROCEEDINGS OF PRIVATE CORPORATIONS AND INDIVIDUALS, ⇨ 122-140.

III. JURISDICTION, PROCEEDINGS, AND RELIEF, ⇨ 141-190.

⇨167 Issues, proof, and variance

1984 In a mandamus action, the court is afforded a wide range of discretion to grant or withhold relief. This option is not available in a books and records inspection case. DEL. CODE ANN. tit. 8, § 220.—*Safecard Services Inc. v. Credit Card Service Corp.*, No. 6426, 10:298.

⇨168(2) Evidence, presumptions and burden of proof

1977 It is not necessary for the stockholder in order to obtain inspection of the books and records of the corporation to show that the directors or officers improperly denied him access to them.—*Catalano v. T.W.A.*, No. 5352, 3:589.

MASTER AND SERVANT

I. THE RELATION, ⇨ 1-47.
- (A) CREATION AND EXISTENCE, ⇨ 1-9.
- (B) STATUTORY REGULATION, ⇨ 10-18.
- (C) TERMINATION AND DISCHARGE, ⇨ 19-47.

II. SERVICES AND COMPENSATION, ⇨ 48-84.
- (A) PERFORMANCE OF SERVICES, ⇨ 48-67.
- (B) WAGES AND OTHER REMUNERATION, ⇨ 68-84.

III. MASTER'S LIABILITY FOR INJURIES TO SERVANT, ⇨ 85-299.
- (A) NATURE AND EXTENT IN GENERAL, ⇨ 85-100.
- (B) TOOLS, MACHINERY, APPLIANCES, AND PLACES FOR WORK, ⇨ 101-129.
- (C) METHODS OF WORK, RULES, AND ORDERS, ⇨ 130-149.
- (D) WARNING AND INSTRUCTING SERVANT, ⇨ 150-158.

(E) FELLOW SERVANTS, ⇨ 159-202.
(F) RISKS ASSUMED BY SERVANT, ⇨ 203-226.
(G) CONTRIBUTORY NEGLIGENCE OF SERVANT, ⇨ 227-249.
(H) ACTIONS, ⇨ 250-299.

IV. LIABILITIES FOR INJURIES TO THIRD PERSONS, ⇨ 300-335.
(A) ACTS OR OMISSIONS OF SERVANT, ⇨ 300-314.
(B) WORK OF INDEPENDENT CONTRACTOR, ⇨ 315-324.
(C) ACTIONS, ⇨ 325-335.

V. INTERFERENCE WITH THE RELATION BY THIRD PERSONS, ⇨ 336-345.
(A) CIVIL LIABILITY, ⇨ 336-341.
(B) CRIMINAL RESPONSIBILITY, ⇨ 342-345.

⇨8(1) Term and duration of employment; in general

1984 Whether a contract of employment is for a fixed or indefinite duration is a question of fact to be decided at trial.—*Thomas v. Delaware Adolescent Program, Inc.*, No. 684, 9:239.

1984 Hiring for an indefinite period of time is a hiring at will and is terminable at the will of either party. The burden of proving the contrary must be assumed by the party who asserts that the employee is engaged for a definite period.—*Id.*

⇨20 Indefinite term

1984 Hiring for an indefinite period of time is a hiring at will and is terminable at the will of either party. The burden of proving the contrary must be assumed by the party who asserts that the employee is engaged for a definite period.—*Thomas v. Delaware Adolescent Program, Inc.*, No. 684, 9:239.

⇨30(1) Grounds for discharge; in general

1984 In a situation involving an employment contract of indefinite duration, an employer's determination not to renew an employee's contract for another year because of budgetary restraints is a legally valid decision.—*Thomas v. Delaware Adolescent Program, Inc.*, No. 684, 9:239.

1984 In determining whether an employment relationship is terminable at will, it is inconsequential whether the relationship is classified as one of employer-employee or as one of employer-independent contractor.—*Id.*

⇨60 Trade secrets of master

1980 A "trade secret" may consist of a formula, process, device, or compilation which one uses in his business and which gives him an opportunity to obtain an advantage over competitors who either do not know or do not use it.—*Bunnell Plastics, Inc. v. Gamble*, No. 5913, 6:331.

1980 Factors to be considered when establishing the existence of a trade secret include the element of secrecy itself, the extent to which the alleged secret is known to others involved in the same general business, the effort and money expended in the development of the alleged secret, and the ease of its duplication by others.—*Id.*

MONOPOLIES

I. VALIDITY AND EFFECT OF GRANTS, ⇨ 1-7.

II. TRUSTS AND OTHER COMBINATIONS IN RESTRAINT OF TRADE, ⇨ 8-31(3).

⇨ 17(2.5) Sale of goods; restrictions on buying competitors' goods; tying agreements

1984 As a general rule, the development and introduction of a system of technologically interrelated products is not sufficient alone to establish a per se unlawful tying arrangement, even if the new products are incompatible with products then offered by the competition, and effective use of any of the new products necessitates purchase of some or all of the others.—*Technicon Data Systems Corp. v. Curtis 1000, Inc.*, No. 7644, 10:322.

MOTIONS

⇨ 1-66 Inclusive

⇨ 39 Reargument or hearing

1984 Generally, a motion for reargument will not be granted unless it appears that there is some decision or some principle of law which would have a controlling effect and which has been overlooked or there has been a misapprehension of the law or of the facts that would change the outcome of the decision.—*Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Sun K. Shin*, No. 7424, 9:487.

1984 A motion for reargument is not designed to accommodate a reargument of matters which were previously considered and determined.—*Id.*

NEGLIGENCE

I. ACTS OR OMISSIONS CONSTITUTING NEGLIGENCE, ⇨ 1-55.
- (A) PERSONAL CONDUCT IN GENERAL, ⇨ 1-15.
- (B) DANGEROUS SUBSTANCES, MACHINERY, AND OTHER INSTRUMENTALITIES, ⇨ 16-27.
- (C) CONDITION AND USE OF LAND, BUILDINGS, AND OTHER STRUCTURES, ⇨ 28-55.

II. PROXIMATE CAUSE OF INJURY, ⇨ 56-64.

III. CONTRIBUTORY NEGLIGENCE, ⇨ 65-101.
- (A) PERSONS INJURED IN GENERAL, ⇨ 65-83.11.
- (B) CHILDREN AND OTHERS UNDER DISABILITY, ⇨ 84-88.
- (C) IMPUTED NEGLIGENCE, ⇨ 89-96.
- (D) COMPARATIVE NEGLIGENCE, ⇨ 97-101.

IV. ACTIONS, ⇨ 102-143.
(A) RIGHT OF ACTION, PARTIES, PRELIMINARY PROCEEDINGS, AND PLEADING, ⇨ 102-119.
(B) EVIDENCE, ⇨ 120-135.
1. PRESUMPTIONS AND BURDEN OF PROOF, ⇨ 121-123.
2. ADMISSIBILITY, ⇨ 124-133.
3. WEIGHT AND SUFFICIENCY, ⇨ 134-135.
(C) TRIAL, JUDGMENT, AND REVIEW, ⇨ 136-143.

V. CRIMINAL RESPONSIBILITY, ⇨ 144.

⇨56(1.3) Efficient cause of injury in general; necessity that act complained of be proximate cause of injury

1977 Negligence will not sustain an action for damages unless it is a proximate cause of the injury.—*Brown v. Fenimore*, No. 4097, 3:552.

PARTIES

I. PLAINTIFFS, ⇨ 1-20½.
(A) PERSONS WHO MAY OR MUST SUE, ⇨ 1-12.
(B) JOINDER, ⇨ 13-20½.

II. DEFENDANTS, ⇨ 21-35.
(A) PERSONS WHO MAY OR MUST BE SUED, ⇨ 21-23.
(B) JOINDER, ⇨ 24-35.

III. NEW PARTIES AND CHANGE OF PARTIES, ⇨ 36-65(3).

IV. DESIGNATION AND DESCRIPTION, ⇨ 66-74.

V. DEFECTS, OBJECTIONS, AND AMENDMENT, ⇨ 75-97(2).

⇨1 Capacity and interest in general

1982 Where a plaintiff has no standing to bring an action in equity, he may not be availed by the fact that others have been injured by the defendants' wrongdoing.—*Brown v. Automated Marketing Systems, Inc.*, No. 6715, 7:466.

⇨9 One or more suing on behalf of all interested

1983 All four clauses of Rule 23(a) must be satisfied before Rule 23(b) is triggered. DEL. CH. CT. R. 23(a) & (b).—*Van De Walle v. Unimation, Inc.*, No. 7046, 8:623.

1983 Rule 23(a)(3) only requires that the plaintiff's claim be "typical of the claims . . . of the class." DEL. CH. CT. R. 23(a)(3).—*Id.*

1983 The initial burden rests on the plaintiff to show the court that all requisites of Rule 23 are met, including the requirement that the class representative will adequately advance the interests of the class throughout the course of litigation. DEL. CH. CT. R. 23.—*Id.*

1983 The burden of showing the dis-

qualification of the plaintiff to serve as class representative falls upon the defendants. DEL. CH. CT. R. 23.—*Id.*

1983 Once a plaintiff has satisfied the prerequisites of Rule 23(a), he must also comply with at least one of the subsections of 23(b) in order to qualify as class representative. DEL. CH. CT. R. 23(a) & (b).—*Id.*

⊂⊃ 10 One or more suing on behalf of all interested—representation in general

1984 As a consequence of the merger, plaintiffs, regardless of whether or not they had demanded appraisal, cannot maintain a derivative action against a corporation which no longer exists.—*Wilen v. Pollution Control Indus., Inc.*, No. 7254, 10:357.

1983 All four clauses of Rule 23(a) must be satisfied before Rule 23(b) is triggered. DEL. CH. CT. R. 23(a) & (b).—*Van De Walle v. Unimation, Inc.*, No. 7046, 8:623.

1983 Rule 23(a)(3) only requires that the plaintiff's claim be "typical of the claims . . . of the class." DEL. CH. CT. R. 23(a)(3).—*Id.*

1983 The initial burden rests on the plaintiff to show the court that all requisites of Rule 23 are met, including the requirement that the class representative will adequately advance the interests of the class throughout the course of litigation. DEL. CH. CT. R. 23.—*Id.*

1983 The burden of showing the disqualification of the plaintiff to serve as class representative falls upon the defendants. DEL. CH. CT. R. 23.—*Id.*

1983 Once a plaintiff has satisfied the prerequisites of Rule 23(a), he must also comply with at least one of the subsections of 23(b) in order to qualify as class representative. DEL. CH. CT. R. 23(a) & (b).—*Id.*

1982 A class representative must be one who can fairly and adequately represent the interests of the class. DEL. CH. CT. R. 23(a)(4).—*Tanzer v. Cavenham Ltd.*, No. 5349, 7:513.

1979 Inquiry into a plaintiff's past record and experience in class and derivative actions, as well as his understanding of them based thereon, could possibly lead to the discovery of relevant evidence bearing on the question of whether or not he is entitled to certification as the person to represent the class under the allegations contained in the complaint.—*Weinberger v. United Financial Corp.*, No. 5915, 5:385.

1979 A class action applicant should not be harassed about his past record and experience as a class action representative.—*Id.*

1979 It lacks a certain grace for a plaintiff to seek certification as the representative of a large group of corporate shareholders and, at the same time, to assert a right to stand mute as to his past efforts as a representative plaintiff and his understanding of the duties and obligations expected of him as a result of his experience.—*Id.*

1979 Even if it may prolong the depositions to answer questions about plaintiff's experience and understanding of class and derivative actions, it seems only fair that such questioning be tolerated with a certain benign understanding in view of the gravity of the responsibility to the other members of the class which a class action plaintiff asks to assume.—*Id.*

1979 In a class action suit challenging the fairness of a corporate merger, the plaintiff seeking to be appointed as the representative of the class is the proper person to be designated as the representative of the class where he has had experience in class or derivative suits, with no proof or history of inadequate or improper performance as a party litigant, and is an experienced private investor with considerable holdings.—*Weinberger v. UOP, Inc.*, No. 5642, 5:166.

1979 In an action challenging the fairness of a corporate merger under Delaware law, a class action suit is comprised of all minority shareholders

of the corporation as of the effective date of the merger which eliminated their equity interests in the corporation, regardless of when or under what circumstances the members of the minority acquired their holdings.—*Id.*

⇐ 11 One or more suing on behalf of all interested—community of interest

1983 All four clauses of Rule 23(a) must be satisfied before Rule 23(b) is triggered. DEL. CH. CT. R. 23(a) & (b).—*Van De Walle v. Unimation, Inc.*, No. 7046, 8:623.

1983 Rule 23(a)(3) only requires that the plaintiff's claim be "typical of the claims . . . of the class." DEL. CH. CT. R. 23(a)(3).—*Id.*

1983 The initial burden rests on the plaintiff to show the court that all requisites of Rule 23 are met, including the requirement that the class representative will adequately advance the interests of the class throughout the course of litigation. DEL. CH. CT. R. 23.—*Id.*

1983 The burden of showing the disqualification of the plaintiff to serve as class representative falls upon the defendants. DEL. CH. CT. R. 23.—*Id.*

1983 Once a plaintiff has satisfied the prerequisites of Rule 23(a), he must also comply with at least one of the subsections of 23(b) in order to qualify as class representative. DEL. CH. CT. R. 23(a) & (b).—*Id.*

⇐ 12 One or more suing on behalf of all interested—numerous parties

1983 All four clauses of Rule 23(a) must be satisfied before Rule 23(b) is triggered. DEL. CH. CT. R. 23(a) & (b).—*Van De Walle v. Unimation, Inc.*, No. 7046, 8:623.

1983 Rule 23(a)(3) only requires that the plaintiff's claim be "typical of the claims . . . of the class." DEL. CH. CT. R. 23(a)(3).—*Id.*

1983 The initial burden rests on the plaintiff to show the court that all requisites of Rule 23 are met, including the requirement that the class representative will adequately advance the interests of the class throughout the course of litigation. DEL. CH. CT. R. 23.—*Id.*

1983 The burden of showing the disqualification of the plaintiff to serve as class representative falls upon the defendants. DEL. CH. CT. R. 23.—*Id.*

1983 Once a plaintiff has satisfied the prerequisites of Rule 23(a), he must also comply with at least one of the subsections of 23(b) in order to qualify as class representative. DEL. CH. CT. R. 23(a) & (b).—*Id.*

⇐ 29 Persons who must be joined—in general

1978 Where an option agreement affecting absent but interested parties was not the basic subject matter of the action, the absence of such parties may not serve as a basis for dismissal of the action.—*A.S.G. Industries, Inc. v. MLZ, Inc.*, No. 5580, 4:282.

⇐ 40 Intervention—persons entitled to intervene

1983 A case is not dismissed under Rule 19(b) because of the failure of the plaintiff to join an indispensable party. Rather, it is dismissed only in the event that the court, considering the particular circumstances of the case, determines that in equity and good conscience the suit should not be permitted to go forward in the absence of those persons who have an interest in the matter as defined in Rule 19(a). It is such a determination that renders the absent persons "indispensable." FED. R. CIV. P. 19(b); DEL. CH. CT. R. 19(b).—*National Education Corp. v. Bell & Howell Co.*, No. 7278, 8:610.

⇐ 40(2) Intervention—persons entitled to intervene; interest in subject of action in general

1982 An intervening party must possess an interest relating to the property or transaction which is the subject of the action. DEL. CH. CT. R. 24(a)(2).—*Tanzer v. Cavenham Ltd.*, No. 5349, 7:513.

1982 Where the nature or extent of the critical property interest must be made to depend on the court's factual and legal conclusions made under the domestic relations law of a foreign jurisdiction, the party seeking intervention does not possess a sufficient interest in the subject property to intervene as plaintiff in a shareholder class action.—*Id.*

1981 Where a stockholder was classified in a class action to represent cashed-out stockholders but not tendering stockholders, permissive intervention in the plaintiff's suit by another tendering stockholder as class representative was appropriate since both classes shared a common question of law and fact irrespective of their different theories of recovery.—*Field v. Allyn*, No. 5951, 6:372.

⊂⊃ 61 Substitution—application and proceedings thereon

1983 The bare fact that a person has an interest in or has rights that will be affected in some way by the outcome of the litigation between the existing parties does not automatically make him an indispensable party.—*National Education Corp. v. Bell & Howell Co.*, No. 7278, 8:610.

1983 In making a determination as to whether or not a party is indispensable, Rule 19(b) requires the court to consider four factors: 1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; 2) the extent to which, by protective provisions in the judgment, by shaping relief or other measures, the prejudices can be lessened or avoided; 3) whether a judgment rendered in the person's absence will be adequate; and 4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. FED. R. CIV. P. 19(b); DEL. CH. CT. R. 19(b).—*Id.*

1983 The factors in Rule 19(b) to be considered in determining whether a party is indispensable are pragmatic considerations governed by practicality and flexibility rather than by idealistic and mechanical standards bottomed upon allegedly inseparable substantive rights. FED. R. CIV. P. 19(b); DEL. CH. CT. R. 19(b).—*Id.*

1983 Where a party already in a case is in a position to fully represent the interest of absent parties, their joinder as parties is not necessary as a practical matter under Rule 19(a) even though joinder is feasible. If joinder of an absent party is unnecessary even where his joinder would be feasible, then Rule 19(b), which is activated only when it is not feasible to join the interested parties, does not come into play and such a party cannot become an indispensable party since that status is only achieved pursuant to Rule 19(b). FED. R. CIV. P. 19(b); DEL. CH. CT. R. 19(b).—*Id.*

1983 Even if preferred shareholders are considered to be proper parties for joinder under Rule 19(a) and such preferred shareholders cannot be made parties, equity and good conscience can require that an action to declare certain provisions and preferences of the preferred stock illegal can proceed among the parties before the court. DEL. CH. CT. R. 19(a).—*Id.*

1983 The criteria of Rule 19 is uniformly applied in determining whether a declaratory judgment action should proceed in the absence of parties whose interest might be at stake and is unaffected by virtue of the language of the Uniform Declaratory Judgment Act as found in DEL. CODE ANN. tit. 10, § 6511, DEL. CH. CT. R. 19.—*Id.*

PARTNERSHIP

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⇨1 Nature of the relation in general

1984 A partner is not entitled to withhold legal advice given to the partnership from another partner even if that advice is in regard to contracts with entities related to the partner from whom the information is sought to be withheld. DEL. CODE ANN. tit. 6, § 1520.—*Pelmar Co. v. Morgas, Inc.*, No. 7519, 9:215.

⇨5 Community of interest in profits and losses—in general

1979 When several business ventures are all carried on by the same parties, and each shares equally in the profits, and contributes equally toward expenses, the relationship will be deemed to be a partnership.—*Miller v. Gilbert*, No. 5567, 5:502.

⇨10 Community of interest in profits and losses—sharing gross receipts

1979 Every partner is an agent of the partnership and an act by a partner in the usual course of business binds the partnership. Both partners will be liable for money borrowed on behalf of a partnership when the evidence shows that the funds were needed to protect the partnership's investment in a corporation. DEL. CODE ANN. tit. 6, §§ 1508, 1509, 1516.—*Miller v. Gilbert*, No. 5567, 5:502.

⇨14 Mutual agency

1984 All partners have equal rights in the management and conduct of the partnership business.—*Pelmar Co. v. Morgas, Inc.*, No. 7519, 9:215.

⇨20 Creation of relation in general

1981 Whether a plaintiff is a partner or an employee is a factual issue and not a matter for summary judgment of dismissal.—*Baffone v. Coastal Maintenance*, Nos. 5989 & 5950, 6:401.

1979 Although a corporation is legally formed, when no stock is ever authorized and issued, the parties sign personally for liabilities, share equally in the profits and losses of the enterprise, and contribute equally when undercapitalized, the enterprise will be deemed a partnership.—*Miller v. Gilbert*, No. 5567, 5:502.

⇨61 Partnership at will

1979 Where a partnership agreement is oral, the purpose is not limited to a particular undertaking, and there is no definite term during which the business relationship should exist, the dissolution of the partnership can be caused by the express will of any partner and such an action will not be in violation of the agreement between the partners. DEL. CODE ANN. tit. 6, § 1531(1)(b).—*Miller v. Gilbert*, No. 5567, 5:502.

⇨70 Nature of obligation between partners

1984 Partners owe a fiduciary duty to other partners at common law.—*Pelmar Co. v. Morgas, Inc.*, No. 7519, 9:215.

⇨111 Defenses in general

1979 A partner who knew for five months that his ex-partner was going to use the partnership name and yet failed to take any action until the ex-partner changed his position in reliance on the right to use the name and made various monetary commitments, is barred by laches from challenging the use of the name.—*Miller v. Gilbert*, No. 5567, 5:502.

⇨118 Injunction

1984 A partner who has failed to pursue promptly his remedies under the partnership agreement may not seek to enjoin his partners from taking actions authorized by the partnership agreement.—*Pelmar Co. v. Morgas, Inc.*, No. 7519, 9:215.

⇨259½ Election of partner to dissolve

1979 Where a partnership agreement is oral, the purpose is not limited to a particular undertaking, and there is no definite term during which the business relationship should exist, the dissolution of the partnership can be caused by the express will of any partner and such an action will not be in violation of the agreement between

the partners. DEL. CODE ANN. tit. 6, § 1531(1)(b).—*Miller v. Gilbert*, No. 5567, 5:502.

1979 When one partner exercised his right to terminate the partnership at will, he will not be liable for damages for a wrongful dissolution. DEL. CODE ANN. tit. 6, § 1538(b)(1)(b).—*Id.*

⇨ 263 Withdrawal of partner

1979 Where a partnership agreement is oral, the purpose is not limited to a particular undertaking, and there is no definite term during which the business relationship should exist, the dissolution of the partnership can be caused by the express will of any partner and such an action will not be in violation of the agreement between the partners. DEL. CODE ANN. tit. 6, § 1531(1)(b).—*Miller v. Gilbert*, No. 5567, 5:502.

⇨ 273 Misconduct of partner

1979 Although it is true that a partner would become entitled to a formal accounting of partnership affairs if he is wrongfully excluded from possession of partnership property, he is not, also, entitled to a dissolution for the wrongful exclusion. DEL. CODE ANN. tit. 6, §§ 1522, 1532.—*Miller v. Gilbert*, No. 5567, 5:502.

⇨ 277 Status of firm after dissolution

1979 When a partner gives notice that he will no longer be involved in the specific operation for which the partnership existed, then the partnership must be considered dissolved as to the incidental operations, also. DEL. CODE ANN. tit. 6, § 1529.—*Miller v. Gilbert*, No. 5567, 5:502.

⇨ 278 Effect of dissolution as to powers of partners

1979 When a partnership is dissolved, all subsequent partnership activities will be construed in light of the partner's obligation to wind up the affairs of the partnership. DEL. CODE ANN. tit. 6, § 1530.—*Miller v. Gilbert*, No. 5567, 5:502.

1979 Once a partnership is dissolved, activities carried on by one partner do not constitute a continuation of the business and the other partner is not entitled to share in any profits nor is he responsible for any portion of the losses.—*Id.*

1979 When a partner gives notice that he will no longer be involved in the specific operation for which the partnership existed, then the partnership must be considered dissolved as to the incidental operations, also. DEL. CODE ANN. tit. 6, § 1529.—*Id.*

⇨ 279 Effect of dissolution as to rights and liabilities of third persons

1979 When a partner gives notice that he will no longer be involved in the specific operation for which the partnership existed, then the partnership must be considered dissolved as to the incidental operations, also. DEL. CODE ANN. tit. 6, § 1529.—*Miller v. Gilbert*, No. 5567, 5:502.

⇨ 285 Contracting new obligations in general

1979 Once a partnership is dissolved, activities carried on by one partner do not constitute a continuation of the business and the other partner is not entitled to share in any profits nor is he responsible for any portion of the losses.—*Miller v. Gilbert*, No. 5567, 5:502.

⇨ 295 Wrongful acts

1979 The fact that a partner had a right to an accounting, upon being wrongfully excluded from a partnership asset, and yet failed to exercise it, is evidence that he intended to remain severed from partnership activities.—*Miller v. Gilbert*, No. 5567, 5:502.

⇨ 299 Who liable to account

1979 The fact that a partner had a right to an accounting, upon being wrongfully excluded from a partnership asset, and yet failed to exercise it, is evidence that he intended to remain severed from partnership activities.—*Miller v. Gilbert*, No. 5567, 5:502.

⇨302 Discharge of obligations

1979 Every partner is an agent of the partnership and an act by a partner in the usual course of business binds the partnership. Both partners will be liable for money borrowed on behalf of a partnership when the evidence shows that the funds were needed to protect the partnership's investment in a corporation. DEL. CODE ANN. tit. 6, §§ 1508, 1509, 1516.—*Miller v. Gilbert*, No. 5567, 5:502.

⇨310 Right to firm name, good will, and books of account

1979 A partner who knew for five months that his ex-partner was going to use the partnership name and yet failed to take any action until the ex-partner changed his position in reliance on the right to use the name and made various monetary commitments, is barred by laches from challenging the use of the name.—*Miller v. Gilbert*, No. 5567, 5:502.

1979 In the absence of proof as to the value of the partnership name and when the only evidence presented shows that the name had no bearing on subsequent business dealings, a partner will not be entitled either to an accounting or to damages due to the use of the name, subsequent to the dissolution of the partnership.—*Id.*

⇨311(4) Private accounting and settlement; laches in disputing settlement

1979 The fact that a partner had a right to an accounting, upon being wrongfully excluded from a partnership asset, and yet failed to exercise it, is evidence that he intended to remain severed from partnership activities.—*Miller v. Gilbert*, No. 5567, 5:502.

⇨321 Time to sue, limitations, and laches

1979 A partner who knew for five months that his ex-partner was going to use the partnership name and yet failed to take any action until the ex-partner changed his position in reliance on the right to use the name and made various monetary commitments, is barred by laches from challenging the use of the name.—*Miller v. Gilbert*, No. 5567, 5:502.

⇨328(2) Evidence; admissibility

1979 Evidence that one partner worked 1200 hours in the partnership enterprise provides no basis for a personal injury claim.—*Miller v. Gilbert*, No. 5567, 5:502.

⇨337 Vouchers and proof of payments

1979 Where the only records available from a partnership enterprise are checkbook stubs and bills and the enterprise has numerous obligations, yet only a checkbook balance of $200, a court of equity will not order an accounting.—*Miller v. Gilbert*, No. 5567, 5:502.

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⇦ 92 Joint inventors

1979 A party is not a co-inventor of a machine when he builds the machine from information given to him by another.—*Science Accessories Corp. v. American Research & Development*, No. 4324, 5:523.

⇦ 211(1) Construction and operation of licenses

1984 Where there is to be any construction of an agreement, it must be construed against the drafter.—*E.I. DuPont DeNemours & Co. v. Shell Oil Co.*, No. 6696, 9:446.

1984 In interpreting an agreement, it is not enough to look at the end result; rather there must be an examination of the relevant documents and surrounding circumstances and a determination of things like custody, control, and title before the issue can be resolved.—*Id.*

⇨216 Contracts for making, use, or sale of patented articles

1984 Where parties bargained for and obtained the right to openly and aggressively compete against each other, the court will intervene to upset the natural order of the marketplace by rewriting the agreement.—*E.I. Du Pont De Nemours & Co. v. Shell Oil Co.*, No. 6696, 9:446.

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⇐8(1) Matters of fact or conculsions; in general

1984 If the complaint does not allege sufficient facts upon which to formulate a conclusion of breach of fiduciary duty, then a motion to dismiss must be granted.—*Zlotnick v. Newell Cos.*, No. 7246, 9:845.

⇐34(1) Construction in general; in general

1984 If the only facts of record are those set forth in the complaint, they control the disposition of the motion to dismiss.—*Zlotnick v. Newell Cos.*, No. 7246, 9:845.

1984 The factual allegations in the complaint must be accepted as true and the plaintiff is entitled to the benefit of any inference to be drawn therefrom.—*Id.*

⇐229 Right to amend pleadings in general

1984 Motions to amend normally will be denied only on a showing of prejudice, undue delay, or legal insufficiency.—*Seibert v. Harper & Row, Publishers, Inc.*, No. 6639, 10:645.

1981 Amendments to pleadings are favored and should be liberally allowed in furtherance of justice in order that every case may so far as possible be determined on its real facts.—*Lustgarten v. Phillips, Inc.*, No. 4055, 7:195.

⇐233 Leave of court to amend

1984 The court of chancery may, in its discretion, permit amendment of pleadings after the pleadings have been closed. DEL. CH. CT. R. 15(a).—*Fisher v. United Technologies Corp.*, No. 5847, 10:194.

1984 As a general rule, leave to amend pleadings should be liberally given. DEL. CH. CT. R. 15(a).—*Id.*

1984 A motion to amend should be made as soon as the necessity for altering the pleadings becomes apparent. But where there is neither improper motive on the part of the movant nor undue prejudice to the other party, unnecessary delay will not require denial of leave to amend. DEL. CH. CT. R. 15(a).—*Id.*

1984 Where the facts upon which the amended complaint was based were known to the plaintiff at or before the time of an earlier amendment, leave to amend may be denied. DEL. CH. CT. R. 15(a).—*Id.*

1984 Where there is no set of facts which could be proven under an amendment to a complaint which would constitute a valid and sufficient claim, leave to amend should be denied.—*Id.*

1984 Notwithstanding that a claim is legally sufficient, leave to amend may be denied where the movant has been unexplainedly dilatory in pursuing discovery and prejudice will result to the defendant.—*Id.*

1984 A trial court is not required to allow amendments of pleadings if the party seeking to amend has been inexcusably careless or if unfair prejudice to the other party would result. DEL. CH. CT. R. 15(a).—*Id.*

1984 The rule governing a motion to amend allows for leave to be freely given when justice so requires. Delaware courts traditionally are liberal with regards to amendment and serious prejudice must be shown before a motion will be denied. DEL. CH. CT. R. 15(a).—*Wechsler v. Abramowitz*, Nos. 6861 & 6862, 9:833.

1981 A proposed amendment should be allowed unless prejudice to other party would result.—*Lustgarten v. Phillips, Inc.*, No. 4055, 7:195.

⇐236(2) Leave of court to amend—discretion of court; affected by time of application in general

1984 Loss of evidence which would be necessary to challenge the claims of the proposed amendment is prejudicial to a non-amending party.—*Fisher v. United Technologies Corp.*, No. 5847, 10:194.

1984 Notwithstanding that a claim is legally sufficient, leave to amend may

be denied where the movant has been unexplainedly dilatory in pursuing discovery and prejudice will result to the defendant.—*Id.*

1984 While laches and unexcused delay may bar a proposed amendment, the mere fact that an amendment is offered late in the case is not enough to bar it if the other party is not prjudiced.—*Lustgarten v. Phillips, Inc.*, No. 4055, 7:195.

⇐ 236(7) Leave of court to amend—discretion of court; new or different cause of action or defense

1981 Lack of notice can be the cause of prejudice to an opposing party.—*Lustgarten v. Phillips, Inc.*, No. 4055, 7:195.

⇐ 237 Leave of court to amend—amendment to conform to proofs

1980 A party may be permitted to amend a complaint to conform to the evidence, entitling it to add to its demands, additional categories of information relevant to determination of corporate waste or mismanagement.—*Agency Rent-A-Car, Inc. v. Gateway Industries, Inc.*, No. 6109, 6:322.

⇐ 238 Leave of court to amend—application for leave, and determination thereon in general

1984 The party seeking to amend a pleading should provide a valid explanation for any neglect or delay.—*Fisher v. United Technologies Corp.*, No. 5847, 10:194.

⇐ 238(1) Leave of court to amend—application for leave, and determination thereon in general; in general

1984 Loss of evidence which would be necessary to challenge the claims of the proposed amendment is prejudicial to a non-amending party.—*Fisher v. United Technologies Corp.*, No. 5847, 10:194.

⇐ 241 Form and sufficiency of amended pleading in general

1984 The standards employed by the court of chancery to determine legal sufficiency are equivalent to those employed under FED. R. CIV. P. 12(b)(6).—*Fisher v. United Technologies Corp.*, No. 5847, 10:194.

1984 Legal insufficiency of an amendment is grounds for denial of leave to amend.—*Id.*

1984 An amendment to a pleading will relate back to the date of the original whenever the claims in the amendment arise out of a conduct, transaction, or occurrence which was set forth or which was attempted to be set forth in the original pleading. DEL. CH. CT. R. 15(c).—*Id.*

1984 Where there is no set of facts which could be proven under an amendment to a complaint which would constitute a valid and sufficient claim, leave to amend should be denied.—*Id.*

⇐ 242 Amendment of declaration, complaint, petition, or statement

1984 Legal insufficiency of an amendment is grounds for denial of leave to amend.—*Fisher v. United Technologies Corp.*, No. 5847, 10:194.

⇐ 245(1) Amendment of declaration, complaint, petition, or statement—condition of cause and time for amendment; in general

1984 Loss of evidence which would be necessary to challenge the claims of the proposed amendment is prejudicial to a non-amending party.—*Fisher v. United Technologies Corp.*, No. 5847, 10:194.

1984 Legal insufficiency of an amendment is grounds for denial of leave to amend.—*Id.*

1984 A motion to amend should be made as soon as the necessity for altering the pleadings becomes apparent. But where there is neither improper motion on the part of the movant nor undue prejudice to the other party, unnecessary delay will not require denial of leave to amend. DEL. CH. CT. R. 15(a).—*Id.*

⇐ 248(9) Amendment of declaration, complaint, petition, or statement—new or different cause of action; actions ex delicto in general

1981 Where relevant records and parties are unavailable, due in part to a nine (9) year lapse from the date of the original filing of a complaint, an amendment to such a complaint by the original plaintiff will not be permitted due to the fact that it is prejudicial to the original defendant.—*Lustgarten v. Phillips, Inc.*, No. 4055, 7:195.

⇐ 251 Amendment of declaration, complaint, petition, or statement—sufficiency of amendment

1984 The standards employed by the court of chancery to determine legal sufficiency are equivalent to those employed under FED. R. CIV. P. 12(b)(6).—*Fisher v. United Technologies Corp.*, No. 5847, 10:194.

1984 Notwithstanding that a claim is legally sufficient, leave to amend may be denied where the movant has been unexplainedly dilatory in pursuing discovery and prejudice will result to the defendant.—*Id.*

1984 Where there is no set of facts which could be proven under an amendment to a complaint which would constitute a valid and sufficient claim, leave to amend should be denied.—*Id.*

⇐ 258(1) Amendment of plea or answer—condition of cause and time for amendment; in general

1984 A motion to amend should be made as soon as the necessity for altering the pleadings becomes apparent. But where there is neither improper motion on the part of the movant nor undue prejudice to the other party, unnecessary delay will not require denial of leave to amend. DEL. CH. CT. R. 15(a).—*Fisher v. United Technologies Corp.*, No. 5847, 10:194.

⇐ 259 Amendment of plea or answer—subject-matter and grounds in general

1984 As a general practice, amendments of pleadings should be permitted, without prejudice, and subject to the filing of a motion by the opposing party.—*Greater Wilmington Sunday Advertiser, Inc. v. Auto Logic Publications, Inc.*, No. 6760, 10:203.

⇐ 283 Supplemental pleading—answer or reply to supplemental pleadings

1984 Although amendments are generally freely granted, motions to amend may be denied where, on the face of the pleading, it is clear that the amended complaint would be subject to dismissal.—*Rabkin v. Philip A. Hunt Chemical Corp.*, No. 7547, 9:800.

⇐ 288 Signatures and certificate of counsel

1984 A motion to dismiss under Rule 11 is not to test whether the complaint states a cause of action but rather to test the conduct of counsel. It is a subjective test as to whether the attorney had good ground to support the allegations. DEL. CH. CT. R. 11.—*Dart v. Kohlberg, Kravis, Roberts & Co.*, No. 7366, 10:177.

⇐ 354(2) Striking out or dismissing pleading or defense—insufficient allegations or denials; mode of making objection

1985 A complaint will not be dismissed unless it appears with reasonable certainty that under any set of facts which could be proved to support the claim plaintiffs would not be entitled to relief.—*Weingarden v. Meenan Oil Co.*, Nos. 7291 & 7310, 10:666.

1984 A motion to dismiss a complaint will not be granted unless it appears with a reasonable certainty that the complaint does not state a claim under any set of facts which could be proven to support it.—*Scari v. Scari's Delivery Service, Inc.*, No. 7552, 10:642.

⇦354(12) Insufficient allegations or denials; inconsistency, uncertainty, indefiniteness or lack of particularity

1984 In deciding a motion to dismiss for failure to state a claim, the test is whether it appears with reasonable certainty that, under any set of facts which could be proved to support the claim, the opposing party would not be entitled to relief. All well pleaded factual allegations must be accepted as true, although legal conclusions are not deemed admitted.—*Rabkin v. Philip A. Hunt Chemical Corp.*, No. 7547, 9:800.

1984 In a motion to dismiss for failure to join an indispensable party, the court must decide whether the absent party has a substantial interest in the subject of the litigation and whether it would be unconscionable to require the joined defendants to defend the action despite such absence.—*J. Royal Parker Assoc., Inc. v. Parco Brown & Root, Inc.*, No. 7013, 10:215.

1984 Whenever joinder of an absent party is not feasible, the court must consider: (1) the extent to which a judgment in the present action would be prejudicial to all persons considered, (2) the extent to which any such prejudice can be avoided, (3) whether the judgment rendered in the party's absence would be adequate, and (4) whether the plaintiff will have an adequate remedy if the action is dismissed. DEL. CH. CT. R. 19(b).—*Id.*

1984 A court should not dismiss a complaint for failure to state a claim unless it appears with a reasonable certainty that a plaintiff would not be entitled to the relief sought under any set of facts which could be proven to support the claim.—*Wilen v. Pollution Control Indus., Inc.*, No. 7254, 10:357.

1984 A complaint should not be dismissed unless it is clearly deficient under any set of facts which could be present in support of its allegations.—*Zlotnick v. Newell Cos.*, No. 7246, 9:845.

PRETRIAL PROCEDURE

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2. GROUNDS IN GENERAL, ⇦ 551-580.
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6. PROCEEDINGS AND EFFECT, ⇦ 671-710.
IV. CONTINUANCE, ⇦ 711-740.
V. PRETRIAL CONFERENCE, ⇦ 741-753.

⇦11 Control by court in general

1983 The application of discovery rules is subject to the discretion of the court. In the exercise of that discretion, discovery should normally be allowed unless the court is satisfied that the administration of justice will be impeded thereby.—*Trans World Airlines, Inc. v. Summa Corp.*, No. 1607, 8:619.

⇦17 Right to discovery and grounds for allowance or refusal

1978 Where there is no longer pending a hearing for preliminary injunctive relief and it is improbable that there will be a trial in the matter in the near future, the need for expedited discovery no longer exists.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:148.

⇐19 Discretion of court

1984 Where appraisal plaintiff to cash-out merger asserts that information reasonably calculated to lead to the discovery of admissible evidence is contained in documents generated after the merger date but referring to events and results foreseeable before the date of the merger, it is within the discretion of the court to allow discovery, based upon a balancing of competing interests and other particular facts.—*Cede & Co. v. Technicolor, Inc.*, No. 7129, 10:158.

⇐25 Sequence and timing; condition of cause

1984 In any case in which discovery of corporate merger records and related transactions is permitted, the time period over which it is allowed following the merger date is always a factor to be considered.—*Cede & Co. v. Technicolor, Inc.*, No. 7129, 10:158.

1978 There should be no deviation from the normal procedure that depositions shall not be taken until after the expiration of thirty days after the service of a summons except in unusual circumstances where conditions exist that would likely prejudice a party if he is compelled to wait.—*Amsellem v. Shopwell, Inc.*, No. 5683, 5:148.

1978 Defendant who undertook discovery prior to the expiration of thirty days after service only because plaintiffs had obtained an order for expedited discovery should not be technically bound by the provisions of rule 30(a)(1), which allows a plaintiff to proceed with depositions prior to the expiration of thirty days after service if defendant has sought discovery, when the reason for the expedited discovery has become moot. DEL. CH. CT. R. 30(a)(1).—*Id.*

⇐28 Scope of discovery in general—grounds of claim or defense; "fishing expedition"

1984 Even though plaintiffs seeking redress under applicable state statute may be entitled to discovery of clearly inadmissible evidentiary matter if it is likely to lead to the discovery of admissible evidence, corporate management should not be required to suffer a costly and disruptive fishing expedition by an appraisal plaintiff. DEL. CH. CT. R. 26(b)(1).—*Cede & Co. v. Technicolor, Inc.*, No. 7129, 10:158.

⇐31 Relevancy and materiality

1984 Even though plaintiffs seeking redress under applicable state statute may be entitled to discovery of clearly inadmissible evidentiary matter if it is likely to lead to the discovery of admissible evidence, corporate management should not be required to suffer a costly and disruptive fishing expedition by an appraisal plaintiff. DEL. CH. CT. R. 26(b)(1).—*Cede & Co. v. Technicolor, Inc.*, No. 7129, 10:158.

1984 Under Delaware statute, parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, notwithstanding its inadmissibility at trial, providing that the information sought appears to be reasonably calculated to lead to the discovery of admissible evidence. DEL. CH. CT. R. 26(B)(1).—*Id.*

1984 Where the particular circumstances of the situation make a discovery request appear to be reasonably calculated to lead to the discovery of information from which admissible evidence as of the date of a cash-out merger could be developed, the discovery should be permitted even though the post-merger information itself would in all possibility constitute inadmissible evidence.—*Id.*

1984 In action by stockholders to set aside directors' plan to limit takeovers, plaintiffs were entitled to determine facts leading to adoption of plan, including legal advice rendered to the

directors.—*Moran v. Household International, Inc.*, No. 7730, 10:247.

1984 In an action by stockholders to set aside directors' plan to limit takeovers, the fact that directors' counsel may have considered or disregarded other approaches or advised other clients differently had no bearing on the issue of actuality of advice rendered.—*Id.*

1984 In an action by stockholders to set aside directors' plan to limit takeovers, the fact that directors' counsel in presentation of the plan may have mischaracterized additional counsel's position did not alter writing reflecting such additional counsel's opinion or justify discovery beyond writing in attempt to find other unarticulated differences.—*Id.*

1984 In an action by stockholders to set aside directors' plan to limit takeovers, information upon which investment banker's analysis of plan was based was relevant and had to be produced to plaintiffs.—*Id.*

⊂⊃ 32 Probable admissibility at trial

1984 Even though plaintiffs seeking redress under applicable state statute may be entitled to discovery of clearly inadmissible evidentiary matter if it is likely to lead to the discovery of admissible evidence, corporate management should not be required to suffer a costly and disruptive fishing expedition by an appraisal plaintiff. DEL. CH. CT. R. 26(b)(1).—*Cede & Co. v. Technicolor, Inc.*, No. 7129, 10:158.

1984 Under Delaware statute, parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, notwithstanding its inadmissibility at trial, providing that the information sought appears to be reasonably calculated to lead to the discovery of admissible evidence. DEL. CH. CT. R. 26(b)(1).—*Id.*

1984 Inability for appraisal plaintiff to point to specific facts reasonably calculated to lead to the discovery of admissible evidence as to the value of minority shares on the date of the merger is not fatal in the situation of a leveraged buyout where it would be inequitable to deny the shareholder qualifying for appraisal rights the opportunity to have post-merger discovery of the corporation in preparation for an appraisal hearing.—*Id.*

1984 In the situation of a leveraged buyout, where a person utilizes the assets of a corporation that he does not own so as to eliminate its minority shareholders, he should not be allowed to later use the discovery rules to prevent such shareholders from reasonably examining the manner in which the take-over plan was carried out.—*Id.*

1984 Where the particular circumstances of the situation make a discovery request appear to be reasonably calculated to lead to the discovery of information from which admissible evidence as of the date of a cash-out merger could be developed, the discovery should be permitted even though the post-merger information itself would in all possibility constitute inadmissible evidence.—*Id.*

1984 An important qualifier to the broad limits of relevancy in the discovery process is that the information sought must be "reasonably calculated" to lead to discovery of admissible evidence. DEL. CH. CT. R. 26(b)(1).—*Moran v. Household International, Inc.*, No. 7730, 10:247.

⊂⊃ 35 Attorney-client and work-product privileges—matter constituting work product in general

1984 In an action by stockholders to set aside directors' plan to limit takeovers, work product privilege may apply to directors' counsel owing to "anticipation of litigation" requirement where no claim had arisen at time work was performed.—*Moran v. Household International, Inc.*, No. 7730, 10:247.

⊂⊃41 Objections and protective orders

1984 In an action by stockholders to set aside directors' plan to limit takeovers, defendants concern that discovery of financial data used by investment banker could be used to defendant's disadvantage outside confines of instant litigation was sufficient to warrant an "eyes of counsel only" limitation on production.—*Moran v. Household International, Inc.*, No. 7730, 10:247.

1983 In ruling on an application for a protective order, the court prefers to risk the possibility of error on the side of permitting depositions to be taken as opposed to the possibility of creating a claim of prejudice which could result in appellate remand and additional years of litigation.—*Trans World Airlines, Inc. v. Summa Corp.*, No. 1607, 8:619.

⊂⊃377 Corporate records

1984 Where appraisal plaintiff to cash-out merger asserts that information reasonably calculated to lead to the discovery of admissible evidence is contained in documents generated after the merger date but referring to events and results foreseeable before the date of the merger, it is within the discretion of the court to allow discovery, based upon a balancing of competing interests and other particular facts.—*Cede & Co. v. Technicolor, Inc.*, No. 7129, 10:158.

1984 Even though plaintiffs seeking redress under applicable state statute may be entitled to discovery of clearly inadmissible evidentiary matter if it is likely to lead to the discovery of admissible evidence, corporate management should not be required to suffer a costly and disruptive fishing expedition by an appraisal plaintiff. DEL. CH. CT. R. 26(b)(1).—*Id.*

1981 Nothing in the Rules of Court would require a party to produce an independent witness for the purpose of discovery by the other party.—*Rosenblatt v. Getty Oil Co.*, No. 5278, 6:362.

1981 An insurance carrier of a defendant can be ordered to appear through an order to compel discovery on the defendant because the insurance carrier stands in the role of a party defendant even though it is not a party in name.—*Id.*

⊂⊃531 Nature and scope of remedy in general

1984 A motion to dismiss is viewed with disfavor and is rarely granted.—*O'Malley v. Tele-Communications, Inc.*, Nos. 7273, 7283 & 7284, 9:797.

⊂⊃624 Clear and certain nature of insufficiency—availability of relief under any state of facts provable

1984 In the context of a motion to dismiss, the moving party must demonstrate that the opposing parties would not be entitled to relief under any set of facts which could be proved to support the allegations of the complaint. DEL. CH. CT. R. 12(b)(6).—*Bonime v. Biaggini*, No. 6925; *Mayer v. Biaggini*, No. 6980, 10:610.

1984 A claim will not be dismissed for failure to state a claim unless it is reasonably certain that plaintiff would not be entitled to relief under any set of facts which could be proved at trial.—*Lord & Burnham Corp. v. Four Seasons Solar Products Corp.*, No. 7319, 9:784.

1984 A court should not dismiss a complaint for failure to state a claim unless it appears to a reasonable certainty that under no stated facts which could be proved to support the claim asserted would plaintiff be entitled to relief, and mere vagueness or a lack of detail are not alone sufficient grounds to dismiss a complaint for failure to state a claim.—*J. Royal Parker Assoc., Inc. v. Parco Brown & Root, Inc.*, No. 7013, 10:215.

⊂⊃681 Matters considered in general

1984 Plaintiff is entitled to the benefit

of all reasonable inferences, but a cause of action exists only if specific facts are alleged in the complaint to support the conclusion upon which relief is claimed.—*Zlotnick v. Newell Cos.*, No. 7246, 9:845.

⇨683 Affidavits and other evidence—presumptions and burden of proof

1984 A court should not dismiss a complaint for failure to state a claim unless it appears to a reasonable certainty that under no stated facts which could be proved to support the claim asserted would plaintiff be entitled to relief, and mere vagueness or a lack of detail are not alone sufficient grounds to dismiss a complaint for failure to state a claim.—*J. Royal Parker Assoc., Inc. v. Parco Brown & Root, Inc.*, No. 7013, 10:215.

1984 In order to survive a motion to dismiss for failure to state a claim, a complaint need only give general notice of the claim asserted and will not be dismissed unless it is clearly without merit, either as a matter of law or of fact.—*Wilen v. Pollution Control Indus., Inc.*, No. 7254, 10:357.

⇨687 Matters deemed admitted—well-pleaded facts

1984 In the context of a motion to dismiss, the moving party must demonstrate that the opposing parties would not be entitled to relief under any set of facts which could be proved to support the allegations of the complaint. DEL. CH. CT. R. 12(b)(6).—*Bonime v. Biaggini*, No. 6925; *Mayer v. Biaggini*, No. 6980, 10:610.

1984 In a motion to dismiss for failure to state a claim upon which relief can be granted, all well pleaded factual allegations are accepted as true but legal conclusions and unsupported factual contentions are not deemed admitted.—*J. Royal Parker Assoc., Inc. v. Parco Brown & Root, Inc.*, No. 7013, 10:215.

1984 All well-pleaded factual allegations must be accepted as true, but legal conclusions and unsupported factual conclusions are not deemed admitted.—*Weingarden v. Meenan Oil Co.*, Nos. 7291 & 7310, 10:666.

1984 All well-pleaded factual allegations must be accepted as true, but legal conclusions and unsupported factual conclusions will not be deemed admitted.—*Wilen v. Pollution Control Indus., Inc.*, No. 7254, 10:357.

1984 The conclusory allegation of fiduciary duty must be supported by facts from which the duty arises.—*Zlotnick v. Newell Cos.*, No. 7246, 9:845.

⇨689 Matters not admitted

1984 A party is not bound by conclusions of law or fact where there are no allegations of specific facts to support such conclusions.—*Zlotnick v. Newell Cos.*, No. 7246, 9:845.

PRINCIPAL AND AGENT

I. THE RELATION, ⇨ 1-46.
   (A) CREATION AND EXISTENCE, ⇨ 1-29.
   (B) TERMINATION, ⇨ 29½-46.

II. MUTUAL RIGHTS, DUTIES, AND LIABILITIES, ⇨ 47-90(2).
   (A) EXECUTION OF AGENCY, ⇨ 47-80.
   (B) COMPENSATION AND LIEN OF AGENT, ⇨ 81-90(2).

III. RIGHTS AND LIABILITIES AS TO THIRD PERSONS, ⇨ 91-199.

(A) POWERS OF AGENT, ⇨ 91-137.

(B) UNDISCLOSED AGENCY, ⇨ 138-146.

(C) UNAUTHORIZED AND WRONGFUL ACTS, ⇨ 147-162.

(D) RATIFICATION, ⇨ 163-176.

(E) NOTICE TO AGENT, ⇨ 177-182.

(F) ACTIONS, ⇨ 183-199.

⇨1 Nature of the relation in general

1977 An express agreement of the creation of a principal and agent relationship is not necessary when an implied or tacit agreement may be found in the intention of the parties as inferred from their conduct viewed in light of the surrounding circumstances.—*Thomas v. Kempner*, Nos. 4138 & 4174, 5:131.

⇨23(3) Evidence of agency—weight and sufficiency; facts showing agency in general

1977 A stockholder's attendance at corporate meetings of whatever type in itself is insufficient to establish an agency relationship.—*Thomas v. Kempner*, Nos. 4138 & 4174, 5:131.

1977 Stockholders may act as agents for their corporation.—*Id.*

⇨29 Extension or renewal

1977 An express agreement of the creation of a principal and agent relationship is not necessary when an implied or tacit agreement may be found in the intention of the parties as inferred from their conduct viewed in light of the surrounding circumstances.—*Thomas v. Kempner*, Nos. 4138 & 4174, 5:131.

⇨48 Nature of agent's obligation

1984 Where defendant proxy solicitor left plaintiff's employ and began to work for the rival faction in a proxy contest, his general knowledge about how proxy solicitations are conducted could not serve as a basis for injunctive relief.—*Pantry Pride, Inc. v. Georgeson & Co.*, No. 7848, 10:254.

⇨69(8) Individual interest of agent; transactions after termination of agency

1984 In the absence of an agreement to the contrary, the law does not generally preclude an employee from working for his former employer's competitors.—*Pantry Pride, Inc. v. Georgeson & Co.*, No. 7848, 10:254.

⇨136(1) Liabilities incurred—liabilities of agent; in general

1977 Defendant agent having no knowledge of the particulars in the fraudulent sale of corporate assets is not at fault for post-trial payment to his principal of amount he owed principal based on their understanding but rightfully due to the corporation.—*Williams v. Don Yerkes Fine Cars, Inc.*, No. 4777, 4:552.

⇨136(4) Liabilities incurred—liabilities of agent; payments to or by agent

1977 Defendant agent having no knowledge of the particulars in the fraudulent sale of corporate assets is not at fault for post-trial payment to his principal of amount he owed principal based on their understanding but rightfully due to the corporation.—*Williams v. Don Yerkes Fine Cars, Inc.*, No. 4777, 4:552.

⇨182 Evidence of knowledge

1984 Regarding a contract between a contractor and a state, equitable subrogation indicates a bank loaning money to the defaulting contractor stands in the contractor's shoes while the surety stands in the shoes of the state.—*United Pacific Insur. Co. v. Ripsom*, No. 7056, 10:337.

PUBLIC SERVICE COMMISSIONS

⇨1-35 Inclusive

⇨2 Constitutional and statutory provisions

1975 Since Public Service Commission has statutory authority to regulate termination of services and to prohibit discontinuance of service for nonpayment where there is a bona fide dispute as to the bill, a utility may not unilaterally terminate service to a consumer for nonpayment when a bona fide dispute exists as to either liability or the accuracy of the bill.—*Artesian Water Co. v. Smalleys D.V., Inc.*, No. 4818, 1:448.

1975 Where the utility has terminated or threatens to terminate service, the remedy of the customer is prompt application to the Commission for relief.—*Id.*

1975 Under no circumstances, after a utility has turned off its water, has a customer the right to simply turn the utility's service back on himself so as to avoid the trouble of seeking an available administrative determination of the utility's right to turn it off in the first place.—*Id.*

RECEIVERS

I. NATURE AND GROUNDS OF RECEIVERSHIP, ⇨ 1-28.

II. APPOINTMENT, QUALIFICATION, AND TENURE, ⇨ 29-64.

III. TITLE TO AND POSSESSION OF PROPERTY, ⇨ 65-80.

IV. MANAGEMENT AND DISPOSITION OF PROPERTY, ⇨ 81-146.

(A) ADMINISTRATION IN GENERAL, ⇨ 81-109.

(B) SUPERVISION AND INSTRUCTIONS OF COURT, ⇨ 110-116.

(C) RECEIVER'S CERTIFICATES, ⇨ 117-129.

(D) SALE AND CONVEYANCE OR REDELIVERY OF PROPERTY, ⇨ 130-146.

V. ALLOWANCE AND PAYMENT OF CLAIMS, ⇨ 147-163.

VI. ACTIONS, ⇨ 164-189.

VII. ACCOUNTING AND COMPENSATION, ⇨ 190-204.

VIII. FOREIGN AND ANCILLARY RECEIVERSHIPS, ⇨ 205-211.

IX. LIABILITIES ON BONDS OR UNDERTAKINGS, ⇨ 212-218.

X. WRONGFUL RECEIVERSHIPS, ⇨ 219-220.

⇨16 Preservation of property pending litigation

1975 The Court of Equity has inherent power to appoint a receiver *pendente lite* even for solvent corporations so as to preserve property involved in litigation, the question being whether such appointment is necessary for the prevention of manifest wrong and injury and whether the plaintiff, without such appointment, is in danger of suffering irreparable loss. Rule 149.—*Farland v. Wills*, No. 4888; *Bank of America v. GAC Properties, Inc.*, No. 4914, 1:467.

⇨44 Conditions on refusing application

1975 Where appointment of a receiver on the application for preliminary relief by one debenture holder might frustrate not only the goal of Credit, but also the hopes and expectations of a majority of debenture holders, such receiver will not be appointed where the utility has not been demonstrated and where it could trigger consequences not beneficial to the debenture holders.—*Farland v. Wills*, No. 4888; *Bank of America v. GAC Properties, Inc.*, No. 4914, 1:467.

RECORDS

⇨1-22 Inclusive

⇨14 Access to records or files

1980 Investigatory files compiled for law enforcement purposes are not public records and are exempted from disclosure. DEL. CODE ANN. tit. 29, § 10002(d)(3).—*News-Journal Co. v. Billingsley*, No. 5774, 6:343.

1980 Allowing disclosure of investigatory files would have a chilling effect upon those who might bring pertinent information to the attention of the investigating agency, and thus its ability to investigate would be crippled.—*Id.*

1980 The person under investigation has a right of privacy that would be jeopardized by making investigatory files available to private persons.—*Id.*

1980 This right of privacy continues even after the threat of law enforcement proceeding has disappeared.—*Id.*

REPORTS

⇨1-6 Inclusive

⇨3 Reporters

1980 It is of no significance that one of the decisions seemingly in conflict is not "officially" reported. However it came about, it is reported, it is known to the corporate bar, and it has been relied upon by corporate counsel.—*Grynberg v. Burke*, No. 5198, 6:223.

SECURED TRANSACTIONS

I. NATURE, REQUISITES, AND VALIDITY, ⇨ 1-67.
   (A) NATURE AND ESSENTIALS, ⇨ 1-40.
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II. PERFECTION OF SECURITY INTEREST, ⇨ 81-110.

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   (A) IN GENERAL, ⇨ 111-130.
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V. ASSIGNMENTS OF SECURITY INTERESTS AND ASSIGNMENTS CREATING SECURITY INTERESTS, ⇨ 181-200.

VI. DISCHARGE AND SATISFACTION, ⇨ 201-220.

VII. DEFAULT AND ENFORCEMENT, ⇨ 221-243.

⇨81 In general

1984 A security interest in an accounts receivable cannot be perfected until it has attached by means of the debtor having delivered goods or performed services which cause the account to come into existence. DEL. CODE ANN. tit. 6, §§ 9-303(1), 9-204(1), 9-204(2)(d) (1982).—*United Pacific Insur. Co. v. Ripsom*, No. 7056, 10:337.

⇨82 Necessity of filing

1984 Since suretyship agreements and rights to equitable subrogation are not covered by article 9 of the UCC, a surety need not file a financing statement to perfect its right to equitable subrogation. The holder of a perfected security interest existing at the time a suretyship arrangement is entered into takes priority over the surety's right to subrogation.—*United Pacific Insur. Co. v. Ripsom*, No. 7056, 10:337.

SECURITIES REGULATION

I. FEDERAL REGULATION, ⇨ 1-240.
   (A) IN GENERAL, ⇨ 1-10.
   (B) REGISTRATION AND DISTRIBUTION, ⇨ 11-40.
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      1. RIGHTS AND LIABILITIES, ⇨ 101-130.
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3. INJUNCTION AND RECEIVERSHIP, ⇨ 171-190.
(F) OFFENSES AND PROSECUTIONS, ⇨ 191-210.
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(A) IN GENERAL, ⇨ 241-290.
(B) CIVIL EFFECTS OF VIOLATIONS, ⇨ 291-320.
(C) OFFENSES AND PROSECUTIONS, ⇨ 321-329.

⇨50 Proxies—deceptive or inadequate solicitations in general

1985 A proxy claim is deficient when the omitted fact does not significantly alter the "total mix" of information made available.—*Weingarden v. Meenan Oil Co.*, Nos. 7291 & 7310, 10:666.

1984 Management is not required by truth-in-proxy provisions to discuss the panoply of possible alternatives to the course of action it is proposing.—*Seibert v. Harper & Row, Publishers, Inc.*, No. 6639, 10:645.

1984 For information in proxy statement concerning repurchase of previously issued stock to constitute a full and adequate disclosure, the proxy statement need not disclose facts known or reasonably available to the stockholders.—*Id.*

1984 Proxy materials are only required to disclose all germane facts; they need not include opinions or possibilities, legal theories, or plaintiff's characterization of the facts.—*Id.*

1963 In determining whether certain language in a proxy is subject to misinterpretation, the standard to be applied is whether a person of reasonable intelligence would have been mislead or confused.—*Bowling v. Bonnerville, Ltd.*, No. 1688, 2:162.

⇨51 Particular proxy statements as deceptive or inadequate

1984 Majority stockholder, in making tender offer to acquire minority interest in corporation, was not required to disclose previous appraisals of real estate higher than ascribed value in offering circular where prior appraisals were estimated liquidation rather than going concern values, where independent investment advisor considered and rejected prior appraisals and where prior appraisals were reflected in corporation's financial statements.—*Lewis v. Charan Indus., Inc.*, No. 7738, 10:233.

1984 Majority stockholder, in making tender offer to acquire minority interest in corporation, was not required to disclose value of tax loss carry forward where such value would depend upon corporation's future performance.—*Id.*

1984 Majority stockholder, in making tender offer to acquire minority interest in corporation, was not required to disclose value of tax loss carry forward where offering circular stated that corporation did not anticipate having to pay income taxes over years included in income projection to the extent it would be able to utilize tax loss carry forward.—*Id.*

1984 Majority stockholder, in making tender offer to acquire minority interest in corporation, did not have to disclose value of tax loss carry forward where corporation's Schedule 140-9, mailed to stockholders, stated amount and expiration period of tax loss carry forward and amount of yearly income taxes corporation would be required to pay in absence of tax loss carry foward.—*Id.*

1984 Majority stockholder, in making tender offer to acquire minority interest in corporation, was not required

to disclose value of a tax loss carry forward where both independent investment advisor and committee of outside directors considered impact of tax loss carry forward in evaluating fairness of offered price.—*Id.*

1984 Majority stockholder, in making tender offer to acquire minority interest in corporation, was not required to disclose separate tender offer where separate offer was aimed at acquiring majority interest and majority stockholder had declined to sell.—*Id.*

1984 Majority stockholder, in making tender offer to acquire minority interest in corporation, was not required to withdraw offer in light of separate offer or match price of separate offer where original price offered was not unfair.—*Id.*

⇐52 Take-over provisions

1985 Disclosure is inadequate if the disclosed information is "buried" in the proxy materials.—*Weingarden v. Meenan Oil Co.*, Nos. 7291 & 7310, 10:666.

1984 In action by stockholders seeking preliminary injunction enjoining majority stockholder's tender offer, plaintiffs failed to establish likelihood of success on breach of fiduciary duty claims where complete disclosure of germane facts enabled minority stockholders to make an informed decision whether or not to tender and where adequate relief would be available in event minority stockholders declined to tender.—*Lewis v. Charan Indus., Inc.*, No. 7738, 10:233.

⇐64 Manipulative and deceptive devices—connection with purchase or sale

1982 A tender offer which points out the consequences of failing to tender is not coercive.—*Klein v. Soundesign Corp.*, No. 6636 & 6643, 7:332.

⇐101 Violations of regulations in general

1985 Approval of a proposed settlement of claims alleging wrongdoing of board members under Delaware state law is in no way intended, on grounds of *res judicata* to bring about termination of claims under federal securities laws.—*Good v. Texaco, Inc.*, No. 7501, 10:854.

⇐131 In general; nature and form of remedy

1982 Minority stockholders who oppose tender offers are entitled to a fairness hearing at which they may seek appropriate relief either in the form of rescission or damages.—*Klein v. Soundesign Corp.*, No. 6636 & 6643, 7:332.

⇐144 Weight and sufficiency of evidence

1985 A proxy claim is deficient when the omitted fact does not significantly alter the "total mix" of information made available.—*Weingarden v. Meenan Oil Co.*, Nos. 7291 & 7310, 10:666.

⇐256 Persons or companies affected

1981 A mere investor in a corporation who does not control it, and who is not offering or selling shares does not fall within the purview of the Delaware Securities Act. DEL. CODE ANN. tit. 6, § 7323.—*Krieger v. Crisconi*, No. 6017, 6:408.

⇐272 Furnishing information, statement, or notice

1978 The Delaware tender offer statute requires that the statement of intention be sent to the target corporation. DEL. CODE ANN. tit. 8, § 203.—*A.S.G. Industries, Inc. v. MLZ, Inc.*, No. 5580, 4:282.

1978 The target corporation is an intended party in actions arising under the Delaware tender offer statute and not merely an "incidental beneficiary." DEL. CODE ANN. tit. 8, § 203.—*Id.*

1978 The Delaware tender offer statute tacitly permits the target corporation to proceed on behalf of its own stockholders. DEL. CODE ANN. tit. 8, § 203.—*Id.*

1978 A pre-tender offer acquisition of an option to purchase target company stock is permissible under the Delaware

tender offer statute. DEL. CODE ANN. tit. 8, § 203.—*Id.*

1978 The Delaware tender offer statute provides a twenty-day period during which the offeror will not purchase or pay for any tendered equity security and any stockholder may withdraw any securities tendered to the offeror. DEL. CODE ANN. tit. 8, § 203(a)(2).—*Carrier Corp. v. United Technologies Corp.*, No. 5705, 4:616.

1978 The Delaware tender offer statute vests in the court of chancery the discretion to direct the target corporation to refuse to transfer the ownership of tendered securities on its books and to refuse to recognize the vote with respect to a tendered security. DEL. CODE ANN. tit. 8, § 203.—*Id.*

1978 Statutory provision requiring a statement to make a tender offer to include a description of any contract, agreement or understanding to which the offeror or any associate of the offer is a party with respect to the ownership, voting rights or any other interest in any equity security of the target corporation requires inclusion of any existing agreements or understandings by virtue of which the means of financing the offer is assured. DEL. CODE ANN. tit. 8, § 203.—*Contran Corp. v. Danco, Inc.*, No. 5509, 3:616.

1978 Knowledge of an existing understanding on the part of the offeror and its associates which assured the viability of a tender offer, acquired by subsequently delivered documents and pre-trial discovery and not by virtue of the statement of intent, does not satisfy the purpose and policy of the statute to provide a full twenty days for evaluation and response to a tender offer. DEL. CODE ANN. tit. 8, § 203.—*Id.*

1978 Statement of intention to make a tender offer which simply states that the tender offer shall remain open for a period of twenty days after it is first made unless extended by the offeror does not satisfy the statutory requirement that the statement of intention include the duration of the offer. DEL. CODE ANN. tit. 8, § 203.—*Id.*

1978 Provision in a statute pertaining to tender offers which requires the offeror to provide a balance sheet as of the end of its last fiscal year is not satisfied when the offeror submits a projected balance sheet reflecting contingent future assets. DEL. CODE ANN. tit. 8, § 203.—*Id.*

1978 Hypertechnical objections based upon target-company defense tactics are not to be condoned in weighing the compliance of a statement of intention to make a tender offer with statutory requirements. DEL. CODE ANN. tit. 8, §203.—*Id.*

1978 Information acquired subsequent to the delivery of the statement of intention and by pre-trial discovery reduced and prejudiced offeree's ability to respond to a tender offer within the statutory period for evaluation. DEL. CODE ANN. tit. 8, § 203.—*Id.*

1978 The tender offer statute does not specifically require an offeror in all cases to disclose all its financing arrangements in its statement of intention. DEL. CODE ANN. tit. 8, § 203(a)(1).—*Servomation Corp. v. City Investing Co.*, No. 5676, 4:599.

1978 Statement of intention indicating the offer "is *expected* to commence on August 23, 1978, and will expire on September 12, 1978, unless extended" satisfies the statutory requirement that the statement set forth "the date on which the offeror *may* first purchase tendered securities." DEL. CODE ANN. tit. 8, § 203(a)(1).—*Id.*

1978 The tender offer statute is a notice statue which goes only to the conditions to be relied upon if the offer is to be conditional. DEL. CODE ANN. tit. 8, § 203.—*Id.*

1978 The tender offer statute does not require full disclosure of all facts relevant to the conditions, but requires only notice of the conditions on which the offeror may choose to rely. DEL. CODE ANN. tit. 8, § 203.—*Id.*

1978 While disclosure of a previously existing "out" might have been more

honorable, it is not required. Its omission does not render the statement of intention defective. DEL. CODE ANN. tit. 8, § 203(a)(1).—*Id.*

1978 Disclosure of various accusations against the offeror might be required under federal regulation; however, the Delaware tender offer statute requires only notice and candid compliance with the nine categories of information therein contained. DEL. CODE ANN. tit. 8, § 203.—*Id.*

1978 The Delaware tender offer statute does not require disclosure of any additional information that might come to mind and be considered important by either the offeror or the target corporation. DEL. CODE ANN. tit. 8, § 203.—*Id.*

1978 If jurisdiction only exists to summarily hear alleged violations of the tender offer statute, then there appears to be no basis to hear and determine alleged violations of that which the tender offer statute does not specifically require. DEL. CODE ANN. tit. 8, § 203.—*Id.*

1978 Failure to disclose nefarious accusations being brought against the offer and its parent and subsidiary corporation by others is not a violation of the tender offer statute. DEL. CODE ANN. tit. 8, § 203.—*Id.*

1978 To violate the tender offer statute, tombstone ads would have to amount to an offer. Announcements or press releases clearly disclaiming being an offer and holding themselves out to be only a notice of the defendant's intention to make an offer at a later date are not in violation of the statute. DEL. CODE ANN. tit. 8, § 203.—*Id.*

SEQUESTRATION

⇨1-21 Inclusive

⇨1 Nature and scope of remedy

1975 An action commenced by sequestration is initially against the property of the non-resident so as to induce his appearance, and at that point is *quasi-in-rem* at best. If the non-resident is thereafter personally served or enters a general appearance, the action also partakes of an *in personam* character. There is nothing unconstitutional about such a proceeding.—*Heitner v. Greyhound Corp.*, No. 4514, 1:188.

⇨6 Grounds and purposes—enforcing appearance or other proceeding

1975 An action commenced by sequestration is initially against the property of the non-resident so as to induce his appearance, and at that point is *quasi-in-rem* at best. If the non-resident is thereafter personally served or enters a general appearance, the action also partakes of an *in personam* character. There is nothing unconstitutional about such a proceeding.—*Heitner v. Greyhound Corp.*, No. 4518, 1:188.

1975 The primary purpose of "sequestration" is not to secure possession of property pending a trial between resident debtors and creditors on the issue of who has the right to retain it. Rather, "sequestration" is a process used to compel the personal appearance of a non-resident defendant to answer and defend a suit brought against him in a court of equity. DEL. CODE ANN. tit. 10, § 366.—*Id.*

1975 The validity of a seizure order depends upon an assertion of non-residency being made. Hence although sequestration is available against a personal representative of decedent, it is his nonresidency not the decedent's which is vital.—*Id.*

1975 The purpose of the sequestration at the time of death of defendant was to secure an appearance, not to secure a judgment execution, hence no lien survives such death.—*Tuckman v. Aerosonic Corp.*, No. 4094, 1:157.

⇨8 Defenses and grounds of opposition

1975 The Del. U.C.C. clearly provides

that a proper sequestration of corporation stock having its situs in Delaware, shall not be rendered invalid by any rights otherwise granted to owners or transferees of corporation stock by other provisions of the Code. DEL. CODE ANN. tit. 10, § 366; DEL. CODE ANN. tit. 8, § 169; DEL. CODE ANN. tit. 5A, § 8-317.—*Heitner v. Greyhound Corp.*, No. 4514, 1:188.

⇦10 Property which may be subject of sequestration

1975 The situs of stock of a Delaware corporation is in Delaware and nothing in the U.C.C. as enacted by Delaware operates to the contrary. Hence, the actual location of the stock certificates has no bearing upon the applicability of the sequestration. DEL. CODE ANN. tit. 2, § 169, DEL. CODE ANN. tit. 8, § 366, DEL. CODE ANN. tit. 5A, § 8-317.—*Heitner v. Greyhound Corp.*, No. 4514, 1:188.

⇦11 Jurisdiction and authority to grant

1975 The situs of stock of a Delaware corporation is in Delaware and nothing in the U.C.C. as enacted by Delaware operates to the contrary. Hence, the actual location of the stock certificates has no bearing upon the applicability of the sequestration. DEL. CODE ANN. tit. 2, § 169, DEL. CODE ANN. tit. 8, § 366, DEL. CODE ANN. tit. 5A, § 8-317.—*Heitner v. Greyhound Corp.*, No. 4514, 1:188.

1975 It is constitutionally proper for Delaware to provide that the situs of capital stock of its corporation is in the home state. Consequently, it cannot be concluded that the sequestration of defendant's stock and stock interests is invalid simply because the stock certificates themselves may be beyond the Court's jurisdiction. DEL. CODE ANN. tit. 10, § 366.—*Id.*

1975 Under the facts of this case, the Delaware sequestration procedure meets the requirements set forth in *Fuentes* and *Mitchell* for justifying post-seizure hearings in that there is (1) a sufficient state interest, (2) a need for prompt action, and (3) sufficiently strident judicial control. Consequently, there is no basis for holding a Delaware statute unconstitutional in that it provides for no pre-seizure hearing on the merits. DEL. CODE ANN. tit. 10, § 366.—*Id.*

1975 The requirements of affidavit required to be filed in an attempt to obtain jurisdiction over non-resident defendants are procedural and not jurisdictional; and the rule contemplates a large measure of discretion by the Chancellor in its application. Court of Chancery Rules, Rule 4(d-b).—*Tuckman v. Aerosonic Corp.*, No. 4094, 1:157.

⇦15 Seizure, custody, and disposition of property

1975 The Del. U.C.C. clearly provides that a proper sequestration of corporation stock having its situs in Delaware, shall not be rendered invalid by any rights otherwise granted to owners or transferees of corporation stock by other provisions of the Code. DEL. CODE ANN. tit. 10, § 366; DEL. CODE ANN. tit. 8, § 169; DEL. CODE ANN. tit. 5A, § 8-317.—*Heitner v. Greyhound Corp.*, No. 4514, 1:188.

1975 Our sequestration practice attempts to minimize the burden placed on one whose stock has been sequestered by giving him the right to control the investment of his seized property pending his appearance. Thus, the defendants are free to transfer their stock, and Greyhound is free to register the transfer provided it is done through the sequestrator and the price received is not less than its market value.—*Id.*

1975 Where one makes a bona fide acquisition of stock from an owner who has been enjoined from transferring it, without knowledge of such restraint, and consequently where the stock itself was never before the court, his title is not necessarily defeated because of the existence of the *in personam* order against his transferor. However, the result is not the same if the action is a *quasi-in-rem* proceeding to seize the stock itself.—*Id.*

1975 Seizure of stock by sequestration does not survive the death of the defendant. DEL. CODE ANN. tit. 10, § 366.—*Tuckman v. Aerosonic Corp.*, No. 4094, 1:157.

⇨16 Proceedings to support or enforce

1977 In a sequestration action, once a nonresident has elected to appear in response to the original complaint, it may not be amended to include a cause of action not asserted in the original complaint.—*Citron v. Merritt-Chapman & Scott Corp.*, No. 3130, 4:237.

1975 The Delaware sequestration statute was enacted to provide in equity a procedure of attachment analogous to foreign attachment at law. Hence, it does not establish an unconditional lien such as is made by execution process founded on a judgment.—*Tuckman v. Aerosonic Corp.*, No. 4094, 1:157.

⇨17 Dissolution or discharge

1975 Where defendants are nonresidents of the State having no property within the State and plaintiffs have no reasonable basis for anticipating ability to secure jurisdiction over the person or property of defendants, the defendant is entitled to a dismissal of the action against him. DEL. CODE ANN. tit. 10, § 366.—*Tuckman v. Aerosonic Corp.*, No. 4094, 1:157.

SET-OFF AND COUNTERCLAIM

I. NATURE AND GROUNDS OF REMEDY, ⇨ 1-21.

II. SUBJECT-MATTER, ⇨ 22-54.

III. OPERATION AND EFFECT, ⇨ 55-61.

⇨60 Effect of failure to assert or claim

1984 In a proceeding under DEL. CODE ANN. tit. 8, § 273, dissolution of the corporate venture is the purpose of the action and thus an alleged inequitable plan or motivation in bringing the action might well constitute a matter of defense. DEL. CODE ANN. tit. 8, § 273.—*Bachmann v. Ontell*, No. 7805, 10:147.

SPECIFIC PERFORMANCE

I. NATURE AND GROUNDS OF REMEDY IN GENERAL, ⇨ 1-24.

II. CONTRACTS ENFORCEABLE, ⇨ 25-86.

III. GOOD FAITH AND DILIGENCE, ⇨ 87-101.

IV. PROCEEDINGS AND RELIEF, ⇨ 102-134.

⇨5 Inadequacy of remedy at law

1984 Where there is no evidence that plaintiff bargained for anything of unique value for plaintiff, plaintiff is not entitled to specific performance, but rather would be limited to the remedy of damages for breach of contract.—*DMG, Inc. v. Aegis Corp.*, No. 7619, 9:437.

⇐8 Discretion of court

1978 Denial of specific performance as prayed for on plaintiff's motion for summary judgment is up to the discretion of the court, on a showing of possible illegality.—*Wilmington Trust v. Lee*, Nos. 4000, 4241 & 4924, 4:572.

⇐16 Defenses or objections to relief—enforcement inequitable or involving hardship

1971 The remedy of specific performance will not usually be denied where the hardship is due to the defendant's own acts or where the hardship was clearly forseeable.—*Tassette, Inc. v. M.A. Gerett, Inc.* No. 2722, 2:152.

⇐28(1) Certainty—in general; in general

1984 Parties seeking specific performance of a contract must rest their case on an agreement which is clear and definite and in which there is no need for the court to be asked to supply essential contractual elements.—*Delaware State Troopers' Lodge Fraternal Order of Police, Lodge #6 v. State*, No. 7228, 9:425.

1984 Although there may be a moral obligation on the part of the defendant agency to compensate employees for funds not appropriated under a collective bargaining agreement, the court is required to limit the remedy of specific performance to the rights created by the contract.—*Id.*

⇐31 Completeness

1984 Parties seeking specific performance of a contract must rest their case on an agreement which is clear and definite and in which there is no need for the court to be asked to supply essential contractual elements.—*Delaware State Troopers' Lodge Fraternal Order of Police, Lodge #6 v. State*, No. 7228, 9:425.

1984 Although there may be a moral obligation on the part of the defendant agency to compensate employees for funds not appropriated under a collective bargaining agreement, the court is required to limit the remedy of specific performance to the rights created by the contract.—*Id.*

⇐55 Illegality

1978 Denial of specific performance as prayed for on plaintiff's motion for summary judgment is up to the discretion of the court, on a showing of possible illegality.—*Wilmington Trust v. Lee*, Nos. 4000, 4241 & 4924, 4:572.

⇐70 Contracts relating to personal property—corporate stock or securities

1971 It is generally held that specific performance of contracts for the sale or delivery of personal property will not be decreed, because money damages will ordinarily enable the party to purchase goods of like kind and quality in the market place, and the rule applies to corporate stocks and bonds which are traded in the market.—*Tassette, Inc. v. M.A. Gerett Inc.*, No. 2722, 2:152.

1971 Where stock is not purchasable in the market and its value is not easily ascertainable, specific performance of the contract may be enforced.—*Id.*

⇐128 Relief awarded—recovery of compensation or damages instead of specific performance; in general

1984 Where there is no evidence that plaintiff bargained for anything of unique value for plaintiff, plaintiff is not entitled to specific performance, but rather would be limited to the remedy of damages for breach of contract.—*DMG, Inc. v. Aegis Corp.*, No. 7619, 9:437.

STATES

I. POLITICAL STATUS AND RELATIONS, ⇨ 1-18.

II. GOVERNMENT AND OFFICERS, ⇨ 19-84.

III. PROPERTY, CONTRACTS, AND LIABILITIES, ⇨ 85-112.

IV. FISCAL MANAGEMENT, PUBLIC DEBT, AND SECURITIES, ⇨ 113-168½.

V. CLAIMS AGAINST STATE, ⇨ 169-189.

VI. ACTIONS, ⇨ 190-215.

⇨130 **Appropriations—necessity**

1984 Article VII, section 6 of the Delaware Constitution of 1897 has been construed judicially to impose a limitation on the collective bargaining statutes for state employees; namely that as to any agreement entered into under the public employee collective bargaining statutes, neither the state nor its agencies can be bound to the expenditure of funds which have not been properly appropriated by the General Assembly.—*Delaware State Troopers' Lodge Fraternal Order of Police, Lodge #6 v. State*, No. 7228, 9·425.

STATUTES

I. ENACTMENT, REQUISITES, AND VALIDITY IN GENERAL, ⇨ 1-65.

II. GENERAL AND SPECIAL OR LOCAL LAWS, ⇨ 66-104.

III. SUBJECTS AND TITLES OF ACTS, ⇨ 105-126.

IV. AMENDMENT, REVISION, AND CODIFICATION, ⇨ 129-148.

V. REPEAL, SUSPENSION, EXPIRATION, AND REVIVAL, ⇨ 149-173.

VI. CONSTRUCTION AND OPERATION, ⇨ 174-278.
- (A) GENERAL RULES OF CONSTRUCTION, ⇨ 174-234½.
- (B) PARTICULAR CLASSES OF STATUTES, ⇨ 235-247.
- (C) TIME OF TAKING EFFECT, ⇨ 248-260.
- (D) RETROACTIVE OPERATION, ⇨ 261-278.

VII. PLEADING AND EVIDENCE, ⇨ 279-300.

VIII. INITIATIVE, REFERENDUM AND SUBMISSION TO POPULAR VOTE, ⇨ 301-375.

(A) INITIATIVE, ⇨ 301-340.
(B) REFERENDUM, ⇨ 341-374.
(C) SUBMISSION TO POPULAR VOTE, ⇨ 375.

⇨83 Regulation of contracts and rights and liabilities under contracts

1978 A written restriction on the transfer of a security of a corporation may be enforced against the holder of the restricted security. DEL. CODE ANN. tit. 8, § 202 and DEL. CODE ANN., tit. 6, § 8-204.—*Lakeshore Deli, Inc. v. Landis Wilson*, No. 715, 5:143.

1978 Under the Uniform Commercial Code, an oral agreement for the purchase of stocks does not create an enforceable contract. DEL. CODE ANN. tit. 6, § 8-319.—*Id.*

⇨158 Implied repeal in general

1981 Repeal by implication is not favored and only occurs when two statutes are so inconsistent that reconciliation is impossible.—*Florida Glass Industries, Inc. v. Kenton*, No. 649, 7:190.

⇨159 Implied repeal by inconsistent or repugnant act

1981 Repeal by implication is not favored and only occurs when two statutes are so inconsistent that reconciliation is impossible.—*Florida Glass Industries, Inc. v. Kenton*, No. 649, 7:190.

⇨184 Intention of legislature—policy and purpose of act

1981 In the absence of a clearly expressed intention to do so, it is not appropriate to construe a statute in such a manner as to alter previously existing statutory policy.—*Florida Glass Industries, Inc. v. Kenton*, No. 649, 7:190.

⇨219(1) Extrinsic aids to construction—executive construction; in general

1981 While the position taken by an administrative agency is normally entitled to some weight, it is not necessarily controlling on the question of legislative intent.—*Florida Glass Industries, Inc. v. Kenton*, No. 649, 7:190.

⇨223.1 Construction with reference to other statutes—in general

1981 Where two statutes speak to the same subject matter, they must be construed, if possible, so as to reconcile them and remove any inconsistency or repugnancy.—*Florida Glass Industries, Inc. v. Kenton*, No. 649, 7:190.

SUBROGATION

⇨1-41 Inclusive
⇨7(1) Sureties or guarantors—subrogation to rights of creditor; in general

1984 Surety's right to subrogation will not allow it, absent fraud, to obtain an equitable lien on funds paid to a creditor by a debtor if prior to default, debtor had the right to make payments and creditor had the right to receive them.—*United Pacific Insur. Co. v. Ripsom*, No. 7056, 10:337.

SUPERSEDEAS

⇐1-9 Inclusive
⇐3 Grounds

1980 There is no basis to require any substantial bond from the corporation when there are actual matters in dispute. Moreover, it would be circuitous to require the corporation itself to put up a substantial bond and to thus commit its assets to pay damages to those who own more than three-fourths of the corporation.—*Grynberg v. Burke*, No. 5198, 6:226.

TORTS

⇐1-30 Inclusive
⇐10(5) Interference with employment or occupation, or injury to business; misuse of or interference with trade secrets, inventions, or patent rights

1984 Confidential customer lists of patients are "trade secrets." The term is defined to include a compilation that derives independent economic value, actual or potential, from not being generally known nor readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and which also is the subject of efforts to maintain its secrecy that are reasonable under the circumstances. DEL. CODE ANN. tit. 6, § 2001.—*Dickinson Medical Group, P.A. v. Foote*, No. 834-K, 9:180.

1984 Appropriation of a trade secret includes use by one person of the trade secret of another without express or implied consent. This applies where the person used improper means to acquire knowledge of the trade secret. This misappropriation may be enjoined. DEL. CODE ANN. tit. 6, §§ 2001, 2002.—*Id.*

1984 To be a trade secret, information sought to be protected must not be generally known or readily ascertainable, must have been developed at the plaintiff's expense, and must be the subject of the plaintiff's intent to keep it confidential. DEL. CODE ANN. tit. 6, § 2001(4).—*Technicon Data Systems Corp. v. Curtis 1000, Inc.*, No. 7644, 10:322.

1984 Assuming that a trade secret had been obtained by proper means, reverse engineering time is a factor in determining whether the information so obtained was readily ascertainable.—*Id.*

1984 In a situation where a trade secret is unknown, yet communicated through a basic and well known method of transmission, novelty is not a requirement to the same extent as for patentability.—*Id.*

1984 Unless the holder of a trade secret voluntarily discloses or fails to take reasonable precautions to insure its secrecy, the law does not require that every conceivable security device be installed to protect the trade secret.—*Id.*

1984 In a situation where access to a hospital computer system is necessarily flexible to accommodate the logistic and geographic diversity of its users, a standard of reasonableness, not completeness, applies to the protection of its interface data from misappropriation.—*Id.*

1984 Under the Uniform Trade Secrets Act, plaintiff can establish misappropriation of a trade secret if the information needed to emulate the secret was obtained by improper means. DEL. CODE ANN. tit. 6, § 2001(2).—*Id.*

1984 Relationships giving rise to a duty not to use or disclose trade secret knowledge is not necessarily depen-

dent upon contract. In a situation where defendant had reached a confidentiality agreement with a former employer, circumstances give rise to a duty to maintain secrecy and limit use of the employer's trade secret. DEL. CODE ANN. tit. 6, § 2001(2)(b)(2)(B).—*Id.*

1984 Where a product's trade secret can be determined through reverse engineering, protection for the product cannot be claimed.—*Id.*

1984 A trade secret has been misappropriated when a defendant knows or has reason to know that a competing product was developed, in part, using trade secrets derived from or through a person who had utilized improper means to acquire them. DEL. CODE ANN. tit. 6, § 2001(2)(b)(2)—*Id.*

⇨26(2) Actions—pleading; issues proof, and variances

1984 The factors to be considered in determining whether a valid action exists for tortious interference with a prospective contractual relation are: (a) whether there is active competition between the parties; (b) whether any wrongful means are used; (c) whether an unlawful restraint of trade is created or continued; and (d) whether there is, at least in part, a purpose to advance a competitive interest.—*Thomas v. Delaware Adolescent Program, Inc.*, No. 684, 9:239.

1984 Where a competitor employed no unlawful means and simply offered a lower price, no action for tortious interference with a prospective contractual relation exists.—*Id.*

TRADE REGULATION

I. TRADE-MARKS AND TRADE-NAMES AND UNFAIR COMPETITION, ⇨ 1-740.
   (A) MARKS AND NAMES SUBJECTS OF OWNERSHIP, ⇨ 1-60.
   (B) ACQUISITION AND TERMINATION, ⇨ 61-90.
   (C) TITLE, CONVEYANCES, AND CONTRACTS, ⇨ 91-130.
   (D) REGISTRATION, REGULATION, AND OFFENSES, ⇨ 131-330.
      1. IN GENERAL, ⇨ 131-150.
      2. REGISTRATION IN GENERAL, ⇨ 151-180.
      3. CONFUSING SIMILARITY AS BARRING REGISTRATION, ⇨ 181-210.
      4. PROCEEDINGS FOR REGISTRATION, ⇨ 211-250.
      5. EFFECT OF REGISTRATION, ⇨ 251-280.
      6. CANCELLATION OF REGISTRATION, ⇨ 281-310.
      7. OFFENSES AND PENALTIES, ⇨ 311-330.
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   (F) UNFAIR COMPETITION, ⇨ 401-539.
      1. IN GENERAL, ⇨ 401-460.

2. USE OF TRADE-MARKS OR TRADE-NAMES, ⇨ 461-520.
3. IMITATION OF PRODUCTS, ⇨ 521-539.
(G) ACTIONS, ⇨ 540-740.
1. IN GENERAL, ⇨ 540-560.
2. PLEADING, ⇨ 561-570.
3. EVIDENCE, ⇨ 571-610.
4. PRELIMINARY OR TEMPORARY INJUNCTION, ⇨ 611-640.
5. PERMANENT INJUNCTION, ⇨ 641-670.
6. DAMAGES AND PROFITS, ⇨ 671-700.
7. TRIAL OR HEARING, ⇨ 701-720.
8. JUDGMENT AND REVIEW; COSTS, ⇨ 721-735.
(H) TRADE-MARKS AND TRADE-NAMES ADJUDICATED, ⇨ 736-740.
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1. IN GENERAL, ⇨ 741-760.
2. UNFAIR METHODS OR PRACTICES CONDEMNED, ⇨ 761-790.
3. PROCEEDINGS AND ORDERS, ⇨ 791-830.
4. JUDICIAL REVIEW AND ENFORCEMENT, ⇨ 831-860.
(B) OTHER STATUTES, LIABILITIES AND REMEDIES UNDER, ⇨ 861-976.
1. UNFAIR TRADE PRACTICES IN GENERAL, ⇨ 861-890.
2. PRICE CUTTING AND SALES BELOW COST, ⇨ 891-910.
3. DISCRIMINATION IN PRICE, SERVICES, OR FACILITIES, ⇨ 911-950.
4. SALES BELOW STIPULATED PRICES, ⇨ 951-976.

⇨ 541 Nature and form of remedy—injunction

1984 The court of chancery does have jurisdiction to enforce a license if the license is unique.—*Scari v. Scari's Delivery Services, Inc.*, No. 7552, 10:642.

⇨ 744 Statutory provisions—nature and purpose

1977 The language of the Franchise Security Law requiring the payment of a specific minimum amount to enter into a franchise arrangement indicates a clear intention to narrow the coverage of the statute, DEL. CODE ANN. tit. 6, § 2551(3).—*Del-Way Petroleum Co. v. Phillips Petroleum Co.*, No. 4802, 3:565.

871 Dealers' franchises

1984 In determining the statutory language "required to pay" in the

definition of a franchise, the court should look to its commonly understood meaning.—*James v. Tandy Corp.*, No. 7033, 10:226.

1984 Where a security deposit is retained by the receiver for his use thus denying the payor the right to receive interest, the receiver has gotten benefit from the security deposit and it is a payment within the meaning of the Delaware Security Franchise Law. DEL. CODE ANN. tit. 6, § 2551.—*Id.*

1984 The burden is on the plaintiff to prove that a decision made failing to renew plaintiff's contract was unjust or in bad faith. DEL. CODE ANN. tit. 6, § 2552.—*Id.*

1977 A distinction must be recognized between customary and reasonably anticipated payments required of a particular dealer or retailer which enable him to perform and carry out the terms of the agreement as opposed to a payment required by the supplier or manufacturer as the price to the dealer of entering into the agreement in the first place. DEL. CODE ANN. tit. 6, § 2551(3).—*Del-Way Petroleum Co. v. Phillips Petroleum Co.*, No. 4802, 3:565.

1977 The purpose of the statute is to cover the situation where the franchisor has not taken specific action to terminate the franchise but is attempting to purge itself of the relationship by simply refusing to deal with the franchise distributor any longer and this requires the existence of a franchise relationship. DEL. CODE ANN. tit. 6, § 2551 et. seq.—*Id.*

TRUSTS

I. CREATION, EXISTENCE, AND VALIDITY, ⇦ 1-111.
   (A) EXPRESS TRUSTS, ⇦ 1-61½.
   (B) RESULTING TRUSTS, ⇦ 62-90.
   (C) CONSTRUCTIVE TRUSTS, ⇦ 91-111.

II. CONSTRUCTION AND OPERATION, ⇦ 112-154.
   (A) IN GENERAL, ⇦ 112-128.
   (B) ESTATE OR INTEREST OF TRUSTEE AND OF CESTUI QUE TRUST, ⇦ 129-154.

III. APPOINTMENT, QUALIFICATION, AND TENURE OF TRUSTEE, ⇦ 155-170.

IV. MANAGEMENT AND DISPOSAL OF TRUST PROPERTY, ⇦ 171-269.

V. EXECUTION OF TRUST BY TRUSTEE OR BY COURT, ⇦ 270-288.

VI. ACCOUNTING AND COMPENSATION OF TRUSTEE, ⇦ 289-333.

VII. ESTABLISHMENT AND ENFORCEMENT OF TRUST, ⇦ 334-377.
   (A) RIGHTS OF CESTUI QUE TRUST AS AGAINST TRUSTEE, ⇦ 334-348.

(B) RIGHT TO FOLLOW TRUST PROPERTY OR PROCEEDS THEREOF, ⇨ 349-358.

(C) ACTIONS, ⇨ 359-377.

VIII. LIABILITIES ON TRUSTEES' BONDS, ⇨ 378-387.

⇨1 Nature and essentials of trusts

1978 Since the relationship which existed between the dissolution trustee and the former shareholders of the corporation was of the nature of a trust, trust law and accounting principles would govern the resolution of the issues to be decided.—*Cannon v. Denver Tramway*, No. 3837, 4:276.

1975 In the absence of fraud, duress, ambiguity or mistake, the real purpose and intent of the settlor is normally ascertained from the provisions of the instrument purporting to create an inter vivos trust and where the instrument is clear, the statements of the assignor as to the interest intended to be transferred may not be considered.—*Fixman v. Diversified Industries, Inc.*, No. 4721, 1:171.

⇨24 Sufficiency of language used

1975 A trust agreement containing a provision directing the two trustees already picked to select a third does not per se fail for indefiniteness because of the existence of the provision. The mere fact that a deadlock may occur and enforcement may be difficult does not mean the agreement is indefinite. DEL. CODE ANN. tit. 10, § 570.—*Fixman v. Diversified Industries, Inc.*, No. 4721, 1:171.

⇨26 Sufficiency of language used—grants of authority involving trust

1975 The settlor in creating a trust can make such provisions with respect to the duties and powers of the beneficiaries as he may deem wise, and if the provisions do not run counter to any rule or policy of the law they are valid and enforceable.—*Fixman v. Diversified Industries, Inc.*, No. 4721, 1:171.

⇨30½ Transactions creating or operating as trusts in general

1978 Since the relationship which existed between the dissolution trustee and the former shareholders of the corporation was of the nature of a trust, trust law and accounting principles would govern the resolution of the issues to be decided.—*Cannon v. Denver Tramway*, No. 3837, 4:276.

⇨38 Acceptance by trustee

1975 When three trustees are called for under a trust agreement and there is a delay in naming the third, such delay being within the contemplation of the parties, the trust is valid.—*Fixman v. Diversified, Inc.*, No. 4721, 1:171.

⇨45 Validity

1975 A trust agreement containing a provision directing the two trustees already picked to select a third does not per se fail for indefiniteness because of the existence of the provision. The mere fact that a deadlock may occur and enforcement may be difficult does not mean the agreement is indefinite. DEL. CODE ANN. tit. 10, § 570.—*Fixman v. Diversified Industries, Inc.*, No. 4721, 1:171.

⇨51 Validity—illegality of provisions

1975 When an employment contract is given as part consideration for the creation of a trust affecting the voting power of a shareholder, such consideration is not invalid when the employee was valuable to the company and it was given as part of an agreement which sought to effectuate

a valid business purpose.—*Fixman v. Diversified Industries, Inc.*, No. 4721, 1:171.

⊂⊃52 Partial invalidity

1975 When three trustees are called for under a trust agreement and there is a delay in naming the third, such delay being within the contemplation of the parties, the trust is valid.—*Fixman v. Diversified Industries, Inc.*, No. 4721, 1:171.

⊂⊃102(1) Breach of duty by person in fiduciary relation in general; in general

1982 While it is clear that a fiduciary may not make a profit at the expense of those for whom he sues, the stockholders of a corporation are not entitled to any share of profits on a constructive trust theory where a shareholder has filed a derivative and class action suit against the corporation and subsequently negotiated a redemption of his stock in good faith for fair consideration.—*Valhi v. PSA*, No. 5730, 7:516.

⊂⊃112 Application of general rules of construction

1975 In the absence of fraud, duress, ambiguity or mistake, the real purpose and intent of the settlor is normally ascertained from the provisions of the instrument purporting to create an inter vivos trust and where the instrument is clear, the statements of the assignor as to the interest intended to be transferred may not be considered.—*Fixman v. Diversified Industries, Inc.*, No. 4721, 1:171.

⊂⊃127 Purposes of trust

1975 Where the purpose of an agreement was to vote stock of a corporation through an impartial committee of trustees in the best interests of the corporation, the separation of voting power from ownership is valid under Delaware law.—*Fixman v. Diversified Industries, Inc.*, No. 4721, 1:171.

⊂⊃179 Diligence and good faith of trustee

1975 When a stockholder-trustee transfers his shares to his wife for the sole purpose of evading the trust restrictions, he has in effect sold his stock to his agent so his agent can vote in his direction. This is an unconscionable breach of duty and should not be tolerated.—*Fixman v. Diversified Industries, Inc.*, No. 4721, 1:171.

⊂⊃187 Charges on and claims against property

1978 In an action to allocate expenditures made on behalf of a dissolution trust, the expenses incurred in settling tort claims against the defunct corporation were chargeable to corpus only, since the settlement of claims against trust property is, for trust accounting purposes, generally treated as an extraordinary expense, payable out of principle.—*Cannon v. Denver Tramway*, No. 3837, 4:276.

⊂⊃270 Duty of trustee in general

1975 The immediate participation of the third trustee required in the agreement is not so essential to the purpose of the trust that the trust fails to come into existence without such participation.—*Fixman v. Diversified Industries, Inc.*, No. 4721, 1:171.

⊂⊃330 Costs and expenses

1978 Litigation expenses incurred in a cause of action which generates both corpus and income to a trust should be apportioned between corpus and income respectively.—*Cannon v. Denver Tramway*, No. 3837, 4:276.

1978 Court has the discretionary power to allow payment of attorney's fees out of trust property, but only if the conduct of the applicant has been reasonable and of benefit to the trust estate.—*Id.*

1978 Attorney's fees incurred in litigation concerned with the allocation or apportionment of two items of interest owed to a dissolution trust, which resulted in an apportionment of the interest between income and corpus, should be apportioned accordingly between them.—*Id.*

1978 In an action to allocate expenditures made on behalf of a dissolution trust, the expense incurred in settling tort claims against the defunct corporation were chargeable to corpus only, since the settlement of claims against trust property is, for trust accounting purposes, generally treated as an extraordinary expense, payable out of principle.—*Id.*

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⇦ 33 Misrepresentation and fraud by vendor—in general

1984 To show fraud sufficient to warrant rescission, a plaintiff must demonstrate that the defendant either misrepresented a material fact or concealed such a fact from the plaintiff at a time when the defendant had a duty to disclose.—*Craft v. Bariglio*, No. 6050, 9:161.

1981 When a party continues an investment after learning of a material misstatement as to his original investment decision, and when he sells his interest to a third party without an effort to mitigate his damages by seeking to sell his interest back to the party making the material misstatement, any claim of damages against the party that made the misstatement is lost.—*Krieger v. Crisconi*, No. 6017, 6:408.

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1977 An action in rem would be exempted from the venue provisions of 12 U.S.C.A. § 94.—*Terry Apartments Associates v. Associated-East Mortgage Co.*, No. 4778, 3:560.

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⇨198(1) Communications to or advice by attorney or counsel—in general; in general

1984 The attorney-client relationship imparts a recognized privilege which protects communications made in furtherance of legal services. DEL. R. EVID. 502.—*Moran v. Household International, Inc.*, No. 7730, 10:247.

1977 The attorney-client privilege exists in Delaware as part of the common law.—*Hollingsworth v. Essence Communications, Inc.*, No. 5312, 4:567.

1977 An exception to the attorney-client privilege is extraordinary and must be limited to the specific need which justifies it.—*Id.*

1977 Where an attorney-client privilege was claimed to exist, it must not be otherwise in violation of a weightier public policy than the protection of a client's confidence in his attorney.—*Id.*

1977 The attorney-client privilege is not absolute.—*Id.*

1977 The attorney-client privilege will be set aside if the circumstances are sufficiently compelling; but only in strictly controlled situations where the potential for abuse can be minimized.—*Id.*

1977 The purpose of the privilege is to enable prospective litigants to avail themselves of the services of those skilled in the law, without fear of publicity or that their confidences could, without their consent, be disclosed.—*Id.*

⇨199(1) Communications to or advice by attorney or counsel—relation of attorney and client

1977 The attorney-client privilege exists in Delaware as part of the common law.—*Hollingsworth v. Essence Communications, Inc.*, No. 5312, 4:567.

1977 The attorney-client privilege applies only if (1) the asserted holder is or sought to become a client; (2) the person to whom the communication is made (a) is a member of the bar of a court, or his subordinate and (b) in connection with this communication is active as a lawyer; (2) the communication relates to a fact of which the attorney was informed (a) by his client, (b) without the presence of strangers, (c) for the purpose of receiving primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceedings, and not (d) for the purpose of committing a crime or tort; and (4) the

privilege has been (a) claimed and (b) not waived by a client.—*Id.*

⇨ 199(2) Communications to or advice by attorney or counsel—relation of attorney and client; parties and interests represented by attorney

1984 In an action by stockholders to set aside directors' plan to limit takeovers, plaintiffs were not entitled to additional discovery against directors' counsel where counsel's advice was limited to issuance of securities over two month period and all attorney-client communications resulting from that activity had been provided.—*Moran v. Household International, Inc.* No. 7730, 10:247.

1984 In an action by stockholders to set aside directors' plan to limit takeovers, both work product and attorney-client privileges applied to opinions prepared by defendant's counsel for other clients and such privileges belonged to and were capable of being asserted by counsel, not defendant.—*Id.*

1984 Application of the minority shareholder lawsuit exception to the attorney-client privilege is particularly appropriate where corporation looks to advice of counsel as a potential defense to claims asserted against it.—*Id.*

1977 The attorney-client privilege is ordinarily available to a corporation even when the corporation is sued derivatively.—*Hollingsworth v. Essence Communications, Inc.*, No. 5312, 4:567.

1977 The attorney-client privilege is just as necessary to a corporation involved in a DEL. CODE ANN. tit. 8, § 225 action as it is to a corporation involved in a stockholders' derivative action.—*Id.*

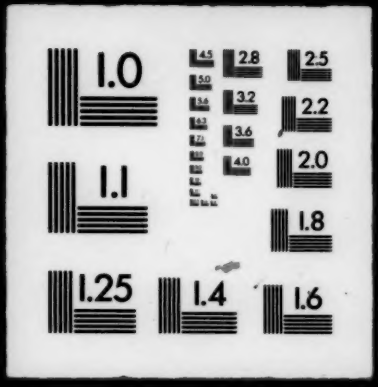
⇨ 201(1) Communications to or advice by attorney or counsel—subject-matter of communications or advice in general; in general

1977 The attorney-client privilege applies only if (1) the asserted holder is or sought to become a client; (2) the person to whom the communication is made (a) is a member of the bar of a court, or his subordinate and (b) in connection with this communication is active as a lawyer; (2) the communication relates to a fact of which the attorney was informed (a) by his client, (b) without the presence of strangers, (c) for the purpose of receiving primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceedings, and not (d) for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by a client.—*Hollingsworth v. Essence Communications, Inc.*, No. 5312, 4:567.

1977 The existence of fraudulent or tortious activities of a client has been long recognized as a reason for an exception to the attorney-client privilege.—*Id.*

⇨ 219(3) Waiver of privilege; communications to or advice by attorney or counsel

1977 The attorney-client privilege applies only if (1) the asserted holder is or sought to become a client; (2) the person to whom the communication is made (a) is a member of the bar of a court, or his subordinate and (b) in connection with this communication is active as a lawyer; (2) the communication relates to a fact of which the attorney was informed (a) by his client, (b) without the presence of strangers, (c) for the purpose of receiving primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceedings, and not (d) for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by a client.—*Hollingsworth v. Essence Communications, Inc.*, No. 5312, 4:567.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